

No. 14702

---

United States  
Court of Appeals  
for the Ninth Circuit

---

FREDERICK I. RICHMAN,                      Appellant,  
vs.

LYDA TIDWELL, ROY E. HALLBERG, as Re-  
ceiver of all the real and personal property  
constituting the former Richman Trust, and  
JOHN WHYTE, attorney for Receiver,  
Appellees.

LYDA TIDWELL,                      Appellant,  
vs.

FREDERICK I. RICHMAN, ROY E. HALL-  
BERG, as Receiver of all the real and personal  
property constituting the former Richman  
Trust, and JOHN WHYTE, attorney for Re-  
ceiver,  
Appellees.

---

Transcript of Record

In Three Volumes

VOLUME II.

(Pages 317 to 648, inclusive.)

---

Appeals from the United States District Court for the Southern  
District of California, Central Division

FILED

SEP 13 1955



No. 14702

---

United States  
Court of Appeals  
for the Ninth Circuit

---

FREDERICK I. RICHMAN, Appellant,  
vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

LYDA TIDWELL, Appellant,  
vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

---

Transcript of Record

In Three Volumes

VOLUME II.

(Pages 317 to 648, inclusive.)

---

Appeals from the United States District Court for the Southern  
District of California, Central Division





(Testimony of Jefferson A. Mann.)

Cross Examination

Q. (By Mr. Enright): Mr. Mann, you took into consideration the duration of the term, that it was from December 1, 1953, to February 28, 1954, that is, three months? A. I did, sir.

Q. And in considering those three months you took into consideration the expense that the person would be put to who would be rendering these services, such as assigning men, is that right?

A. Yes, sir.

Q. And setting up bookkeeping, is that right, and expense that would be incurred?

A. That is correct.

Q. Assuming there was no expense on the part of the Receiver, other than his own personal time, would that affect your opinion as to the 5 percent?

A. My opinion of the 5 percent is based on the facts as I know them in this case, and in this particular case my opinion of the 5 percent contemplated the payment by the trust [84] of the bookkeeping expense.

Q. That wasn't included in your hypothetical statement, was it? A. I am sorry, sir?

Q. That wasn't included in the hypothetical statement submitted to you, that the trust would pay the bookkeeping expenses, was it?

Mr. Whyte: Yes, it was, Mr. Enright.

The Witness: Yes.

Mr. Whyte: If you will look on page 3, the top of the page, the first sentence, "The Receiver also employed a full time bookkeeper in connection

(Testimony of Jefferson A. Mann.)

with the operations of the former Richman trust, who was paid a monthly salary from the former trust assets."

Q. (By Mr. Enright): Did you take into consideration that the Receiver was paid a full time salary, while being employed, by the County of Orange, for his full work week commencing Monday morning at 9:00 and ending at 5:00 o'clock each day, and ending at 5:00 o'clock on Friday of each week, during the period commencing December 7, 1953, the week after he was appointed, to and including——

Mr. Whyte: That is objected to as assuming facts not in evidence.

Q. (By Mr. Enright): ——through and including February 28, 1954? Did you take into consideration any such facts as [85] that?

The Court: The objection should be placed after the question has been completely put. I suppose you were afraid the witness would come right out with an answer, before you got a chance to object. I don't think he would. He seems to be a deliberate sort of a witness. But I think the question is proper. Of course, it assumes. It is not a hypothetical question.

It is cross examination upon the hypothetical question you put. It assumes something as to which I suppose Mr. Enright is going to propose some evidence. If he doesn't propose some evidence he will be in a position of having asked a question that is not backed up by evidence.

I don't know of anything in the evidence now that

(Testimony of Jefferson A. Mann.)

suggests of employment by the County of Orange, that it was as extensive as this question indicates, but having scanned the deposition, in order to be better prepared for this hearing, I recall that Mr. Hallberg testified that he did hold a position with the County of Orange and it might be by the time we have the entire picture before us, that what Mr. Enright suggests in his question will be found to be true; I don't know. The objection is overruled.

Mr. Enright: Would you read the question?

(The question was read.)

The Witness: My answer to that is no, I did not for the reason I had no knowledge of it. And in further [86] explanation of my statement, it would not have made any difference in my opinion of value, because he rendered the services required of him in spite of the fact he was employed in other occupations.

Q. (By Mr. Enright): Pardon me, sir. Go ahead, if you wish to go on. You are non-responsively answering my question. Go ahead.

A. I thought I had answered. I had no knowledge of it, and I was explaining my answer, Mr. Enright.

The Court: You are entitled to give that explanation. If you don't, in response to this question, Mr. Enright will probably ask some more, or Mr. Whyte will. So we are going to have the whole picture here before we get through with the case, anyway.

Q. (By Mr. Enright): How do you know that

(Testimony of Jefferson A. Mann.)

he performed the services, other than because someone has told you and stated this hypothetical question to you?

A. I believe as an expert witness I am entitled to make certain assumptions on facts submitted to me.

The Court: You may assume that every fact stated in this hypothetical question is true. You can't add more facts to it.

The Witness: And basing my answer and explanation on the facts as contained in that statement, and as his Honor just stated, those facts are true, for that reason it would [87] not have made any difference.

Q. (By Mr. Enright): Now, if those facts are not true, then you would have a different opinion, wouldn't you?

A. Naturally.

The Court: Since you have worked in this field, tell me, is it possible to do everything that is enumerated in this hypothetical question asked you today and hold some other employment at the same time, or is this a full time job?

The Witness: Your Honor, in answering your question, if I may in this way, he was represented by his wife, who was an unpaid employee, who transacted a portion of the business.

He further was responsible for the function, and going to Rowan & Co. for illustration, for the purpose of illustration, the property manager or principal can make decisions at any time during the day.



(Testimony of Jefferson A. Mann.)

He can function on Saturdays, Sundays. He can function in the evenings.

And I would say, in answer to your Honor's question, that it is entirely possible for a man to do that, even though employed in another occupation.

The Court: Well, tell me, is your acquaintance with this type of business such that you would know whether it is customary for them to do so?

The Witness: Your Honor, the customary operations is for one man to handle many properties, such as the representatives of Rowan & Co. They make periodic trips to the [88] properties. The resident personnel in the property, such as the resident manager or whoever is there, has direct charge subject to the functions to the head of the apartment or the head of—such as Mr. Hallberg was doing. It is not customary for the individual himself in his position to do most of these functions. That is generally delegated to some subordinate.

Q. (By Mr. Enright): You were speaking of property management, were you not, sir, and not a receiver appointed by the court—

A. I am speaking of property management, yes, sir.

I believe that was your question, wasn't it?

The Court: Yes. I understand that this man is here as an expert on property management and not as an expert on receiverships.

Mr. Enright: Yes.

The Court: Hence, I asked my questions, having in mind the custom in property management, be-

(Testimony of Jefferson A. Mann.)

cause although we must apply the receivership rule, an intelligent application of that rule calls for knowledge of what is done in private business as well.

Mr. Enright: Very well. May I ask a further question?

The Court: Surely.

Q. (By Mr. Enright): Did you take into consideration that the only experience this man had since, I will say, [89] January 1, 1933, until the time of his appointment in the management of apartment house properties, and then only for an apartment house having 16 or 14 units, and then only that he managed that for a period of December 20, 1949, to November 29, 1950, that is, approximately 11-month period, operating one apartment house of 14 units, did you take that into consideration, that that was the experience of this man so far as apartment houses was concerned?

A. The experiences set forth in this question, as related to me, was that he managed some 50 units, 40 to 50 buildings of different types, and that he had also, while living in southern California owned and actively engaged in the management of apartment houses and other residential property located in this area. I took that into account.

Q. Did you take into account that the only apartment house he operated or owned or in any manner managed since January 1, 1933, was a 20-unit apartment house during the period December

(Testimony of Jefferson A. Mann.)

20, 1949, to November 29, 1953? Did you take that into account?

A. No, I did not know that fact.

The Court: What difference does it make in your ultimate answer, assuming that fact, as stated by Mr. Enright, to be a fact?

The Witness: It would have made no difference in my answer, your Honor. [90]

Q. (By Mr. Enright): Am I correct then, that his not having any experience wouldn't have made any difference, in your opinion, as to the value of his services being 5 percent?

A. No, that is not my answer.

Q. If his only experience were 11 months in one apartment house, wouldn't that have a bearing on your opinion, as to the value of his services?

A. That is not my understanding of it. I understand from the information supplied to me, upon which I predicated my answer, that he had managed 40 to 50 buildings. The period of whether or not he had managed one building since would not be of material effect, because he would be well versed from previous experience, where he had managed a large group of buildings. You just don't forget overnight your experiences under that type of operation.

The Court: Counsel is making the point here that that was very remote in time.

The Witness: That is what I said, your Honor.

The Court: Are you telling us the remoteness doesn't make any difference?

(Testimony of Jefferson A. Mann.)

The Witness: He is well versed in the methods of operation, yes, your Honor.

Q. (By Mr. Enright): And you would say Chicago operations, some 40 places for a bondholder during the year 1931 would be experience qualifying a person in December 1953 for [91] the operation of apartment houses in Los Angeles?

A. I would say that management of apartment houses in 1931 was a far more difficult period due to the period after the famous 1929 market crash, when apartment houses were very hard to operate. They were very difficult to obtain funds to operate. It was particularly difficult to even get tenants in them.

I would say that his experience at that time would stand him in good stead today.

Mr. Enright: No further questions.

### Redirect Examination

Q. (By Mr. Whyte): What special significance, if any, did you attach to the fact, assumed in the hypothetical question to you, that the Receiver posted a bond of \$75,000.00 in this proceeding to insure the faithful discharge of his duties as Receiver?

A. To obtain \$75,000.00 bond the man would have to be of financial stability, good moral and—good reputation, to be able to obtain a bond of that size and character.

Q. Did you take into consideration the respon-



(Testimony of Jefferson A. Mann.)

sibility which a Receiver has for the acts of his agents and subordinates?

A. I did, very definitely. He is responsible, he is subject to all actions of those people under him. He is not only financially but he is morally responsible, and that is [92] the reason for the \$75,000.00 bond.

Mr. Whyte: I have no further questions.

The Court: Neither have I.

Mr. Enright: I would like to ask Mr. Hallberg some questions this afternoon. It may well be I can avoid causing his employer coming in from Orange County. I have him under subpoena at this time.

The Court: I intended to sit about until 20 minutes of 5:00. I have appointments with counsel in another matter that wanted to come after court, and I told them to be here at a quarter of 5:00.

Mr. Whyte: May Mr. Mann be excused?

The Court: May this witness be excused?

Mr. Enright: So far as I am concerned.

The Court: You are excused.

The Witness: Thank you, sir.

(Witness excused.)

### ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

#### Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, you are

(Testimony of Roy E. Hallberg.)

now employed by the County of Orange, are you not? [93] A. That is correct.

Q. And you made an application to the County of Orange before December 1st, at least in the form of taking a civil service examination, did you not?

A. That is correct. That is not a civil service examination. That is a county examination.

Q. Some form of county examination. You did go to work for the County of Orange on December 7, 1953? A. That is correct.

Q. Your hours of employment are from 8:00 o'clock in the morning to 5:00 p.m. each day, Monday through Friday?

Mr. Whyte: Your Honor, I am going to register an objection to this line of testimony on the ground it is immaterial and irrelevant.

The question before the court is what is the reasonable value of the services which the Receiver has performed. What he may have done apart from those services has nothing to do with the determination of compensation that should be awarded to him for what he has done, without controversy.

The Court: But it appears to be controverted. Our knowing what other demands he had upon his time, during the time he was acting as the court receiver, I think would be very valuable to the court. The objection is overruled.

Mr. Whyte: Very well, your Honor.

Mr. Enright: Please read the question. [94]

(The question was read.)

The Witness: The hours are not stipulated.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Is Mr. Louis Byrum your immediate superior? A. He is.

Q. Did he direct you to report for work each work day of the week, Monday through Friday, after you commenced to work on or about December 7, 1953?

A. No, the only thing that I have to do is put in the eight hours required.

Q. My question was, did he direct you to put in eight hours' working time between the hours of 8:00 a.m. and 5:00 p.m. A. No.

Q. You did commence work on December 7, 1953? A. December 7th, correct.

Q. You were required to put in eight hours' work for the County of Orange each work day, Monday through Friday?

A. With one exception.

Q. February 22nd? Washington's Birthday?

A. No.

Q. Christmas? A. No.

Q. What other exception?

A. The exception was when I went with the county they [95] were informed I had prior commitments, which you can verify, that might take some time.

The Court: What did they tell you about it?

The Witness: Sir?

The Court: What did they say about it, when you informed them?

The Witness: That was perfectly all right for these prior commitments.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): You were required, though, to render eight hours' services to the County of Orange, were you not, each day?

A. With the exception of those commitments which were entered into prior to December 7th.

Q. And you were paid a monthly salary for your services, were you? A. That is correct.

Q. The monthly salary was \$355.00 per month?

A. Correct.

Q. And you were paid that salary for the month of December, 1953?

A. Not for the month of December; jut part of the month.

Q. That is, the remainder of the month of December, excluding the first week?

A. That is right.

Q. At the rate of \$355.00 a month? [96]

A. Yes.

Q. You were paid \$355.00 for the month of January? A. Correct.

Q. And the same for the month of February?

A. Yes.

Q. Same for the month of March, 1954?

A. Yes.

The Court: Would it be fair to say that the County of Orange got on an average of eight hours a day out of you during the time counsel has inquired into?

The Witness: Yes.

Q. (By Mr. Enright): Do you recollect that you gave your deposition on April 22nd in support of

(Testimony of Roy E. Hallberg.)

your petition in this matter, at which time you testified concerning your duties for the County of Orange?

A. Will you state that question again?

Mr. Enright: Please read the question.

(The question was read.)

The Witness: Yes.

Q. (By Mr. Enright): Directing your attention to your deposition, page 13, line 6:—

Mr. Whyte: Perhaps you had better show the witness the deposition, if you are attempting to lay a foundation for impeachment, Mr. Enright.

Mr. Enright: Yes, I will. To page 15, line 12.

Mr. Whyte: May I show my copy to the witness?

The Court: Yes, he is entitled to see it.

Mr. Enright: May I have the original deposition now, because I am only working from a copy. I have never seen the original yet.

Mr. Whyte: What are the pages and lines again?

Mr. Enright: Page 13, line 6, to page 15, line 12. I might inquire have there been any changes on those pages?

Mr. Whyte: Yes, there have been a few changes.

Mr. Enright: Is that the scrubbing-up of the English? Is that the only thing that was referred to this morning? I guess that is all.

Q. (By Mr. Enright): You have that before you?

Mr. Whyte: Let's get the page and line again.

Mr. Enright: Page 13, line 6.

Mr. Whyte: To what?

Mr. Enright: Page 15, line 13.



(Testimony of Roy E. Hallberg.)

The Court: May the original deposition be brought in from my chambers? I will put it down here and look at it, Mr. Enright. I don't recall whether this, at this particular place there are changes or not.

Mr. Enright: I think there was a change in "Uh-huh", to "Yes."

Mr. Whyte: I still don't have the concluding page and line to which you refer. [98]

Mr. Enright: Please read it to him.

(The record was read.)

Mr. Whyte: Page 15, line 13.

The Court: At the places you have just mentioned, Mr. Enright, I do not see any changes on the original.

Put the original before the witness.

Mr. Enright: I saw the change, I think, on Mr. Whyte's copy. That is what I was basing my statement on.

The Court: There are changes on those pages, but I understand at the lines you are referring to there are no changes, at the immediate lines.

Why not come up and take a look at the deposition, so everyone will know what we are doing?

Q. (By Mr. Enright): At that time did you testify as follows, concerning your duties at the County of Orange, commencing on page 13, line 6:—And I will read—

"Q. Well, what special assignments or special jobs have you performed since October of '53?

(Testimony of Roy E. Hallberg.)

A. Well, let's see, I have done some appraisal work, and I managed our own building.

Q. For whom did you do appraisal work, or special jobs, since October of '53?

A. County of Orange.

Q. County of Orange, and would you explain further what you mean by 'special assignment' or [99] 'special jobs'?

A. Well, those are usually somebody needed a little help on something. It was more or less jobs that—you see, I could—until just a few years ago, just about a year ago, I wasn't capable of doing any sustained work.

Q. Now——

A. I think that will hold it for the time being.

Q. Well, I would like to know. You see, that's October '53. You were appointed receiver on December 1st, '53.

A. Yes.

Q. Were you doing special jobs and assignments after your appointment?

A. Yes.

Mrs. Hallberg: Took a trip or two for Binkley's, didn't you?

The Witness: Well, I took that prior to December, 1953. That's some time ago. Yes, I have been doing some since that time.

Mr. Enright: Q For whom?

A. For the county.

Q. County of Orange? A. Yes. [100]

Q. What department? A. Appraisal.

Q. What department of the county?

A. Appraisal.

(Testimony of Roy E. Hallberg.)

Q. Appraisal Department of the County of Orange? A. That's right.

Q. Is that under the Board of Supervisors or——

A. Well, it's under the County Appraiser.

Q. I beg pardon?

A. Under the County Appraiser.

Q. Would that be the County Assessor's Office?

A. County Assessor's Office, that's right.

Q. On how many occasions did you do appraisal work for the County Appraiser's Office?

A. Quite a few.

Q. In number how many?

A. Oh, I—I couldn't tell you exactly. I haven't counted them.

Q. You have a particular rate of compensation that you receive from the County of Orange?

A. Yes.

Q. What is the rate of compensation?

A. Well, it's about \$350 a month.

Q. What are the terms as to time that you are required to expend in rendering services to the [101] County of Orange?

A. Well, it's more or less on my own.

Q. Well——

Mrs. Hallberg: You haven't done that since October.

Q. (By Mr. Enright): You have done no work for the County of Orange since October, 1953, is that what I understood Mrs. Hallberg to state?

A. I haven't done it—oh, I have been there at



(Testimony of Roy E. Hallberg.)

the county, yes; I have been working there at the county since that time.

Q. On how many different occasions?

A. Right straight through.

Mrs. Hallberg: No, not since October of '53."

Did you so testify at that time, that is, April 22, 1954?

The Court: What he wants to know, Mr. Hallberg, is did the reporter get it down correct? Are those the questions asked and the answers you answered at that time?

The Witness: I question some of the phraseology here.

The Court: That is not what we can go into now. The question is, is that a correct report of what was said at the time that it is reported?

The Witness: I believe it is.

Q. (By Mr. Enright): Now, directing your attention to your deposition again, on April 22, 1954, at page 34, line 15, [102] to page 38, line 18.

I will ask you to review those pages and state whether or not you did so testify at that time.

A. Now, what is your first question?

Mr. Enright: Read the question, please, Miss Reporter.

(The question was read.)

(The witness complies.)

Mr. Whyte: Now, Miss Reporter, will you read the question again?

(The question was read.)

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Did you so testify at that time? A. I did.

Q. At that time you testified, and may I read the original, not, as you have made some changes, commencing at page 34, line 15:

“Q. Now, you are presently employed, are you, by the County of Orange? A. That’s right.

Q. At what salary?

A. I think you have that.

Q. \$350 a month? A. 300——

Q. You are presently employed?

A. That’s right.

Q. When did you commence working for the [103] County of Orange at 350?

Mr. Whyte: Objected to as having already been asked and answered.

Mr. Enright: He has not stated the date or what month he commenced working. He says October or November or December. Now, which month is it?

Mr. Whyte: The witness has stated to the best of his recollection, Mr. Enright. It’s been asked and answered, and I am going to instruct the witness not to answer it further.

Mr. Enright: Q. All right, which month of the year 1953 did you commence working for the County of Orange as an appraiser.

Mr. Whyte: Same objection.

Mr. Enright: You instruct him not to answer, Mr. Whyte?

Mr. Whyte: I do.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Will you cite the witness, instruct the witness, Miss Reporter?

Mr. Whyte: You don't have to. I will stipulate with you that the questions may have been put to this witness in the proper manner. You don't have to go through any formal rigmarole.

Mr. Enright: I appreciate your concept of rigmarole, but you do agree, do you, Mr. Whyte, that [105] the reporter has instructed the witness to answer this question: In what month of the year 1953 did he become an employee of the County of Orange at a salary of \$350 a month?

Mr. Whyte: So stipulated.

Mr. Enright: And the witness refuses to answer?

The Witness: On advice of counsel.

Mr. Whyte: On advice of counsel.

Mr. Enright: All right.

Q. Now, do you have any particular office hours during the week as an employee of the County of Orange?      A. No.

Q. Are you required to report at any time on any day of any week?      A. No.

Q. Will you state how many days during the month of December you worked for the County of Orange; that is, December, 1953?

Mr. Whyte: Objected to as having already been asked and answered. The witness testified very few.

Mr. Enright: Q. Do you have a desk as an employee of the County of Orange?      A. No. [105]

(Testimony of Roy E. Hallberg.)

Q. Do you have a telephone extension number?

A. No.

Q. Who is it that assigns you or directs you in your work whereby you receive a salary of \$350 a month as an employee of the County of Orange?

A. Chief Appraiser of the Personal Property Division.

Q. His name, sir? A. Mr. Louis Byram.

Q. Would you spell it? A. B-y-r-a-m.

Q. How long have you known him?

A. About three, six months, I guess. No, well, since about—it's about four months.

Q. Can you state how many days during the month of December you rendered services to the County of Orange?

Mr. Whyte: Objected to as having already been asked and answered.

Mr. Enright: Q. Will you state how many days—and this has not been asked of you—you expended your time in rendering services to the County of Orange in the month of January, 1954?

Mr. Whyte: If you can recall, Mr. Hallberg.

The Witness: No. [106]

Mr. Enright: Q. On advice of counsel, you can't recall, is that right, Mr. Whyte?

Mr. Whyte: I asked him if he can recall.

Mr. Enright: Is that an objection for this record?

Mr. Whyte: I am not objecting to the witness——

(Testimony of Roy E. Hallberg.)

Mr. Enright: Are you aiding the witness, Mr. Whyte?

Q. Do you recall——

Mr. Whyte: Mr. Enright, I don't like your attitude.

Mr. Enright: I appreciate you don't. That's mutual.

Mr. Whyte: I stated on the record that if the witness can recall, he may answer.

Mr. Enright: Is that an objection?

Mr. Whyte: That is not an objection.

Mr. Enright: Very well.

Q. Can you recall, Mr. Hallberg?

A. I said I couldn't recall.

Q. Now, I will ask you another question, Mr. Hallberg: Can you recall how many days during the month of February, 1954, you spent in rendering services to the County of Orange at a salary of \$350 a month? [107]

A. The exact time? I cannot recall.

Q. Can you give us any estimate at all as to the amount of time you spent in either one of those three months, December, January or February, 1953, 1954?

Mr. Whyte: Will you read the question back, please, Miss Reporter?

(The pending question was read by the reporter.)

Mr. Whyte: Objected to as having already been asked and answered. The witness is instructed not to answer."



(Testimony of Roy E. Hallberg.)

Did you so testify, and the following did occur at that time, on April 22, 1954, is that correct?

A. Yes.

The Court: I understood his testimony here today to be that he worked on an average of eight hours a day on a five-day week for the County of Orange during the time in question.

Is that right, Mr. Hallberg?

The Witness: That is correct.

Mr. Enright: Well, I had to ask the questions, because the witness at page 36, I think it is, as follows, testified at that time, so now I am first informed his questions and answers were:

“Q. Now, do you have any particular office hours during the week as an employee of the County [108] of Orange?      “A. No.

“Q. Are you required to report at any time on any day of any week?      “A. No.”

That is the subject matter we are now informed, I take it, this Receiver had an eight-hour day for the County of Orange.

The Court: As I understood him, it was an average of eight hours per day on five-day week basis, but that it wasn't always eight in any one particular day, it just averaged up to eight hours.

Mr. Enright: Well, I understand that to be his testimony. I will clarify, if I may.

The Court: Surely.

Q. (By Mr. Enright): Were you or were you not instructed by Mr. Byrum to report to work at 8:00 a.m. or 9:00 a.m. in the morning?

(Testimony of Roy E. Hallberg.)

A. No. The requirements there are eight hours a day.

Q. Well, what eight hours is it, between midnight and midnight, or what? A. Could be.

Q. You mean there are no office hours, so far as you are concerned, in your status as an employee of the County of Orange? [109]

A. The type of work I was doing——

Q. Please, sir, would you mind answering my question? A. I am trying to.

Q. I am not concerned about the type of work you are doing. I am concerned only in one point, as to your office hours.

Mr. Enright: I submit it involves only an answer——

The Witness: I had no office hours.

Q. (By Mr. Enright): That is your testimony?

A. That is it.

The Court: Mr. Hallberg, were you appraising property, or what?

The Witness: I was auditor-appraiser.

The Court: Was that work performed in an office in the county establishment or was it performed—— The Witness: Out in the field.

The Court: ——various places.

The Witness: Out in the field. A lot of the work that I picked up was analyzed and transferred to other records at home that night.

The Court: Did you hear the answer?

Mr. Enright: I would like to have it read.

(The answer was read.)

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Weren't you required, Mr. Hallberg, to spend a one-half day in the office and one-half day [110] in the field?

A. Not necessarily.

The Court: Well, was that the practice?

The Witness: No, it wasn't the practice.

The Court: I don't like to interrupt in the midst of a phase of cross examination, but we are going to adjourn for the day.

You noted the jury case ahead of you, which was scheduled to have ended last week, but isn't over as yet.

I know counsel arranged their calendars for days on which a case is set, so I am making them work on a share-time basis until they get through.

We can open at 9:15, if you like, tomorrow, because we are going to have to give them the afternoon.

You don't have to come at 9:15, if you wish to we will get in a long morning. If it is an inconvenient hour, we will convene at 10:00.

Mr. Enright: I am committed to transcontinental calls between 9:00 and 9:45. I can be here at 9:30, perhaps. I had better ask it be at 9:45, if I may.

The Court: All right. We will stand adjourned until 9:45 tomorrow morning.

(Whereupon, at 4:45 o'clock p.m., Wednesday, May 12, 1954, an adjournment was taken to Thursday, May 13, 1954, at 9:45 o'clock a.m.)

\* \* \* \* \* [111]



LOUIS B. BYRUM,

called on behalf of the defendants, being first duly sworn, testified as follows:

The Clerk: Please be seated. Your full name, sir.

The Witness: Louis B. Byrum.

Direct Examination

Q. (By Mr. Enright): What is your residence, Mr. Byrum?

A. 815 North Van Nuys, Santa Ana.

Q. Your occupation, sir?

A. I am a Deputy Assessor with the County of Orange.

Q. Do you know Mr. Roy E. Hallberg?

A. Yes, sir.

Q. How long have you known him?

A. I would say approximately five months.

Q. You came to the courtroom with him this morning, did you?

A. I came up with him, yes, sir.

Q. Are you in any manner connected with Mr. Hallberg in your employment?

A. My position is supervising appraiser, and he works in my department. [115]

Q. Is Mr. Hallberg assigned to appraiser work upon marine and personal property for the County of Orange?

A. He is not.

Q. Does he work under your direction?

A. He does.

Q. What is his assignment under your direction?

A. He is an auditor-appraiser.

Q. You were subpoenaed, were you, to produce certain records?

A. Yes, sir.

(Testimony of Louis B. Byrum.)

Q. Have you produced the record of Roy E. Hallberg making application for employment to the County of Orange? A. I have not.

Q. Did you check to see if there was such a record?

A. That is not within my jurisdiction. It is not in my department.

Q. What did you do in response to this subpoena?

A. I found out that my particular position is not either to hire or fire. That is not even under my jurisdiction. I have no access to those records.

Q. Did someone say that to you? I asked you what you had done. You told me what you found out. I believe that is your conclusion.

I am merely trying to find out what you did?

A. I was informed that those were not—— [116]

The Court: Then you made some inquiry?

The Witness: I did make some inquiry.

The Court: What he wants to know is what inquiry did you make or what led to your being informed?

The Witness: I found out that the records of the employment——

The Court: How did you do that? Did you take down a book and find rule so and so or did you ask the County Council?

The Witness: No, I talked to the assessor and also called the personnel office.

Q. (By Mr. Enright): Now, am I correct in my

(Testimony of Louis B. Byrum.)

understanding that Mr. Hallberg works under your supervision and direction?

A. Under my supervision, yes, sir.

Q. Can you state when Mr. Hallberg started to work under your supervision and direction?

A. I hadn't stated, no, sir.

Q. Would you state?           A. December 7th?

Q. 1953?           A. 1953.

Q. Did he continue to work under your supervision and direction through February 28, 1954?

A. That is right, yes, sir. [117]

Q. Is he still under your supervision and direction?           A. Yes, sir.

Q. Did you direct him to report for work on the work days of Monday through Friday at a particular hour in the morning?           A. No, sir.

Q. Have you ever given him any direction as to the hours of his employment?           A. No, sir.

Q. You know, of your own knowledge, whether he has any particular hours of employment?

A. The county ordinance provides a 40-hour week of eight hours a day, but no specific time.

The Court: Does it require that 40 hours be devoted during the week to county business?

The Witness: That is right, yes, sir.

Mr. Enright: I must confess, your Honor, surprise at this time, and I will state the basis of the surprise by interrogating the witness.

The Court: Well, I understood you expected a different series of answers.

Mr. Enright: I certainly did.

(Testimony of Louis B. Byrum.)

The Court: You don't have to state it further, if your purpose is impeachment.

Mr. Enright: All right. [118]

Q. (By Mr. Enright): Did you have a conversation on the telephone with me last Tuesday concerning the subject matter of your appearing in this court on Wednesday?

A. I had a conversation concerning appearing, yes, sir.

Q. Now, before that conversation last Tuesday, that is, of this week, had you also talked to Mr. Winthrop O. Gordon, an attorney practicing at Santa Ana?

A. Yes. He came to my office.

Q. And he served the subpoena upon you, did he?

A. He did.

Q. Did he at that time show you a letter?

A. He did.

Q. He did? A. He did.

Q. Do you have a copy of the letter?

A. I have a copy—I have the original, I believe.

Q. May I see it? A. No, it is a copy.

Mr. Enright: May I have the document marked for identification?

The Clerk: Defendants' Exhibit A for identification.

(Said document was marked Defendants' Exhibit A for identification.)

Q. (By Mr. Enright): Directing your attention to [119] Exhibit A for identification, did you have a conversation with Mr. Gordon at the time

(Testimony of Louis B. Byrum.)

that the subpoena was served upon you, which I assume was some day after May 3, 1954?

Would you answer that last part first? The subpoena was served after May 3, 1954, wasn't it?

A. Yes.

Q. And at the time the subpoena was served you received this letter, didn't you, Exhibit A?

A. I did.

Q. Now, my question is: Did you have a conversation with Mr. Gordon concerning the second paragraph? I will read it.

"I understand Mr. Byrum will testify that he is the Deputy Assessor, Auditor-Appraiser, for the County of Orange, in charge of marine and personal property appraisal; that in this capacity it is his duty to supervise the work of Mr. Roy E. Hallberg who has been instructed and is required to report for work each day of the week Monday through Friday, at the hour of 8:00 a.m., and to remain on duty until 5:00 p.m.; that he is required to spend one-half of each day in the office and one-half of each day in the field, performing his duties as an appraiser; that Mr. Hallberg commenced performing his duties on Monday, December 7, 1953, and continued [120] each work day through February 28, 1954, at a monthly salary of \$355.00 per month."

Did you have a conversation with Mr. Gordon?

A. Yes, sir.

Q. Did you state to him in substance the same as is stated in that paragraph?

A. I did not.



(Testimony of Louis B. Byrum.)

Q. What did you state to Mr. Gordon?

A. I told him that the contents of this letter was incorrect.

Q. You stated that to him at the time the subpoena was served?

A. I told him that at the time.

Q. Did you have a previous conversation, within 10 days or more, or approximately, before this letter was shown to you?

A. I had a previous conversation with Mr. Winthrop—I don't recall the exact time.

Q. Did you at that time tell Mr. Winthrop Gordon Mr. Hallberg's hours were from 8:00 in the morning until 5:00 in the afternoon?

A. I did not.

Q. What are his hours?

Mr. Whyte: Objected to as having already been asked and answered; gone over several times. [121]

The Court: Overruled.

The Witness: The question is what are his hours?

Q. (By Mr. Enright): Yes, work days.

A. There is no definite hours set up in the ordinance.

Q. What hours do you report to work?

A. I happen to be supervising appraiser and the office opens at 8:00, but many times I am not there. If I have other business I don't go near the office.

Q. What time does the office close?

A. The office closes at 5:00.

(Testimony of Louis B. Byrum.)

Q. What time do you leave the office when you are working?

A. I sometimes leave at 6:00 o'clock. I sometimes leave in the afternoon at 4:00 o'clock, or any time.

Q. How many men or persons work under your direction there?

A. Some approximately 60.

Q. 60?

A. Yes. That could vary one way or the other, but that is approximately the number.

Q. Will you again state the nature of the work that you had instructed Mr. Hallberg to perform?

A. Mr. Hallberg is an auditor-appraiser.

Q. Will you now explain what are the duties of an auditor-appraiser under your direction for the County of [122] Orange, and Mr. Hallberg in particular?

A. What his particular duties are?

Q. Yes.

A. His duties are to call upon the various industries in the county, to prepare assessment statements for them, to assist them in preparing assessment statements.

Q. Does he have any office duties at all?

A. No definite duties, no.

Q. What does he do when he works in the office of the County of Orange under your direction?

A. He comes in and possibly completes his work from time to time, but with no definite hours.

Q. You have told us about the indefiniteness of the hours, I appreciate that.

(Testimony of Louis B. Byrum.)

Tell me how he completes his work in the office.

A. Well, do you want me to go through the complete assessment procedure?

Q. Yes, if that is what Mr. Hallberg does. If he participates in it, would you explain what his duties are?

A. He obtains from the taxpayer—he obtains a property statement and then he figures the various assessment values, and then transfers that record to a permanent record.

Q. And that is a part of his duties, to make up this permanent record of the County of Orange?

A. Right. [123]

Q. And how many hours a day does he spend in performing this office, these office duties?

A. I can't answer that question.

Q. Have you no knowledge of how many hours a day he spends in the office during this period?

A. I don't know. It isn't definite.

Q. But you do observe him there, don't you?

A. That is right, but I couldn't answer that; I do not know.

Q. Well, how many men perform the same type of duties that Mr. Hallberg performs, that you have under your direction?

A. We have two that are performing the same type of duties.

Q. Now, have you ever done this appraisal work yourself?      A. Yes, sir.

Q. Business places whose property is being appraised or assessment record being made upon, they



(Testimony of Louis B. Byrum.)

are normally open during office hours, aren't they?

Mr. Whyte: Objected to as leading and suggestive, and argumentative. This witness is called by the defendants in this case, and I suggest that counsel stand by questions which are to elicit direct testimony.

The Court: I think he should have full privilege of cross [124] examination of this witness. I don't know that he is strictly adverse. Mr. Enright, if he is at least living up to expectations, it doesn't entitle you to full impeachment, but I think it does entitle you to a rather full cross examination, so we will allow it.

The Witness: I don't remember the question.

Q. (By Mr. Enright): Now, I will reframe the question. You have done assessment work such as Mr. Hallberg is performing for the county, haven't you, in the past? A. Yes, sir.

Q. And does that involve going out to the places of business situate in the County of Orange and looking at the personal property there?

A. It does.

Q. In their places of business? A. Yes.

Q. It is personal property assessment, isn't it?

A. I am in charge of the personal property division, yes, sir.

Q. That is the type of work Mr. Hallberg is doing, isn't it? A. That is right.

Q. Those places of business are normally open and available to inspect the personal property dur-

(Testimony of Louis B. Byrum.)

ing the hours of 8:00 in the morning until approximately 5:00 in the evening? [125]

A. They are not.

Q. They are normally, that is, normally when you do the work of assessing?

A. May I ask you a question?

Q. Surely.

A. Bullock's don't open until 10:00 o'clock, do they?

The Court: Mr. Witness, we can't get into arguments. You can ask questions if it is necessary for you to understand.—

The Witness: The point was that I was trying—

The Court: —the question put to you. I will take that as an answer to the effect that you are governed somewhat by the hours of availability of the persons conducting the businesses whose assets your office appraises, is that right?

The Witness: That is correct.

Q. (By Mr. Enright): Now, the offices of the places of business in Orange County are normally available for assessment work during the hours from 8:00 to 5:00 p.m.?

A. Will you restate that question? I didn't quite understand it.

Mr. Enright: Will you read the question?

(The question was read.)

The Witness: Not all of them.

The Court: Let's see, Mr. Witness, ordinarily

(Testimony of Louis B. Byrum.)

appraisal work is done during the business day, isn't it? [126]

The Witness: Yes, but some of them, your Honor, are not open at that time of day. Do I make it clear?

The Court: Yes. I am trying to appreciate what businesses would not be open during the daytime, particularly in Orange County. We don't think of it as a night spot. Offhand, can you name any manufacturing industries that work three shifts down there at Santa Ana at this time, that work around the clock and have the executive offices open 24 hours a day.

The Witness: No, I don't know that.

The Court: The witness has said that work is ordinarily done during the business day. The court understands the business day to mean some time between sunrise and sunset, as an ordinary thing.

Q. (By Mr. Enright): Now, ordinarily, you, Mr. Byrum, do not go out at sunrise, around 6:00 in the morning and go into these executive offices for the records of these personal property owners, to do assessment work, do you?

A. No, I do not, not at sunrise.

Q. It is normally after 8:00 o'clock in the morning?

A. It is normally after 8:00 o'clock, yes, sir.

Q. It is before 5:00 o'clock when the normal executive or administrative employees go home, isn't it?

A. Not always.

Q. No, but I said normally. [127]

(Testimony of Louis B. Byrum.)

A. Well,—

Q. Isn't that right, Mr. Byrum?

A. Yes.

Q. And normally Mr. Hallberg performs his eight-hours' duties between 8:00 in the morning and 5:00 in the evening, isn't that right?

A. That is not right.

Mr. Enright: No further questions of this witness.

The Court: Well, does Mr. Hallberg's work include the preparation by him of reports and data of one kind and another for your office?

The Witness: Yes.

The Court: Is that work of preparing such forms one that requires a small amount of his time or does it require a large amount of his time?

The Witness: I would say that the preparing of the data requires about as much of his time as in the actual interview in the business.

The Court: Do you have some rules or regulations of your office where that preparation of the data shall be done?

The Witness: We do not.

The Court: Ordinarily a person having a problem with the assessor's office can walk into the assessor's office and find someone back of the counter who is available to answer questions or give office assistance, sir. Is that true of [128] your office?

The Witness: Yes, sir.

The Court: Does Mr. Hallberg ever have the

(Testimony of Louis B. Byrum.)

duty of being the person behind the counter, to render such services?

The Witness: He does not.

The Court: Well, what are the duties that he has within the office?

The Witness: His duties within the office are to complete his assessment of the business. In other words, to make permanent records and transfer to permanent records, and he may do that in the office or he may do it at home. He may do it anywhere. He doesn't necessarily have to do it at the office.

The Court: Is he on a quota basis?

The Witness: He is not.

The Court: Was he at any time within the past year?

The Witness: On a quota basis?

The Court: Yes, turning out a certain amount of work. For instance, we judges are on a quota basis. They assign us a certain number of cases. We have to handle a certain number.

Do you assign your deputy assessors, such as Mr. Hallberg, a certain number of cases or assessments or certain areas?

The Witness: Yes, I turn over definite cases to Mr. [129] Hallberg.

The Court: Now, did he during the time, beginning in December of 1953 and extending through March of 1954, turn in a full quota of work?

The Witness: He turned in a full quota of work.

The Court: Then would it be fair to say that he was devoting 40 hours a week to the duties of



(Testimony of Louis B. Byrum.)

his employment with you, in order to dispatch that quantity of work? Do you understand what I mean?

Would a man have to work about 40 hours a week in order to do that much work?

The Witness: It would seem so, yes.

The Court: Do you have any reason to believe Mr. Hallberg didn't devote that amount of time to the discharge of his duties with you?

The Witness: I have no reason to believe he did not. We were aware of the fact that he had prior commitments.

Mr. Enright: I move to strike the statement as not being responsive to the question.

The Court: It wasn't responsive to any question. It is something which could have been brought out by a proper question, though, so I will let it stand.

Q. (By Mr. Enright): If one were to call KImball 2-6211 and ask for Extension 355 he would reach Mr. Hallberg?

A. You would reach my desk, my phone. [130]

Q. Kimberly, I think it is.

A. That is right. You would reach my phone, my desk.

Q. Do you permit the deputy assessors to take the permanent records of the County of Orange away from the office to their homes?

A. I might explain that in this way: We have what is known as a fee sheet, real estate sheet. That particular record is a permanent record, but it goes out with the deputy and from that it is

(Testimony of Louis B. Byrum.)

transferred to a permanent roll, which never leaves the office.

The Court: Counsel, just for your information, you can point out to me, if I am in error, wherein I am in error, but I think the point has been pretty well made here that the County of Orange had a demand upon Mr. Hallberg for 40 hours a week.

As I understand this witness' testimony, that 40 hours was served by erratic time. I think it makes no difference whether, for the purpose of this case, Mr. Hallberg did the work at home or if he did it in the office. He was spending 40 hours a week with Orange County, which would show that 40 hours a week, at least, were not being devoted to the duties of this Receivership.

Mr. Enright: Yes. At a rate of pay of \$355.00 a month.

The Court: And that he was earning \$355.00 a month. I think those points have been pretty well made. The [131] important thing here is how shall that be considered in the fixing of his fee?

Mr. Enright: I have no further questions on the same subject matter.

Q. (By Mr. Enright): Tell me, you didn't employ Mr. Hallberg, did you?

A. I do not employ them, no.

Q. Did you have any conversation with him concerning the terms of his employment before he was employed?

A. Yes.

Q. And when did that occur?

A. I couldn't tell you definitely.

(Testimony of Louis B. Byrum.)

Q. Was it a week or 10 days before he commenced to work? A. Yes.

Q. That would be in the latter part of November?

A. This particular conversation that I had with him was as a result of examinations. In other words, I talked to 15 people who took this particular examination, and I wouldn't say I definitely talked to him about a permanent appointment at that time, because I hadn't interviewed them all, if that is what you are trying to bring out.

Q. I am trying to fix time, first, Mr. Byrum. When was the examination given?

A. I can't remember that, really. [132]

Q. Was it 30 or 60 days or 90 days before December 7, 1953?

A. I conducted so many examinations at that time I don't really—there are several examinations conducted.

Let me explain a little bit. You see, we employ about 40 seasonal people, and these examinations were conducted from time to time, and I couldn't tell definitely when this one was conducted.

The Court: Is Mr. Hallberg an employee on a seasonal basis?

The Witness: He is a permanent employee, yes, sir.

Mr. Enright: I didn't hear the answer. Will you read it?

The Court: He is a permanent employee, as I understood it.

(Testimony of Louis B. Byrum.)

Mr. Enright: That is my understanding.

The Witness: Yes.

Q. (By Mr. Enright): In any event, there were 15 different persons interviewed by you concerning this particular position held now by Mr. Hallberg?

A. Yes, sir.

Q. And among those 15 persons one of them was Mr. Hallberg?

A. Yes, sir.

Q. And at that time you had a conversation with Mr. [133] Hallberg, did you, concerning his employment?

A. Yes, concerning the employment.

Q. Of Mr. Hallberg?

A. He hadn't definitely been selected at that time.

Q. Was that the time you were advised by him he had previous commitments?

A. I don't know.

Q. What did he say about his previous commitments to you?

A. At the time I called him for work, I know at that time he told me about previous commitments.

Q. What did he say?

A. I called him to go to work, I believe it was, Wednesday—wait a minute. It was either Wednesday or Thursday of the—before the 7th of December that I called him.

He told me at that time he had prior commitments and wanted to know if it would be all right to come to work on Monday, the 7th.

(Testimony of Louis B. Byrum.)

Q. And that is all that was said at that time? He did report for work on Monday, the 7th, didn't he? A. That is right.

Mr. Enright: I have no further questions of the witness.

Mr. Whyte: I have one or two questions, Mr. Byrum.

Mr. Enright: May I offer in evidence Exhibit A for [134] identification. That is the letter the witness admitted receiving.

The Court: Admitted.

(Said document marked Defendants' Exhibit A was received in evidence.)

Mr. Whyte: Just for the purpose of the record, I would like the record to show that this is an attempt to impeach Mr. Byrum with respect to a matter which is wholly immaterial.

I registered an objection yesterday to this line of testimony, as to what Mr. Hallberg did for the County of Orange for the time he spent there, because what he did down there doesn't make any difference in so far as his compensation for this receivership is concerned.

If he did the things which are alleged in his petition and spent the time that he says he has spent and performed the duties which are enumerated and set out in his petition, and testified to in his deposition, then, in my opinion, it doesn't make a bit of difference what he did on the side, because he is entitled to compensation for the work which he did.



(Testimony of Louis B. Byrum.)

The Court: Of course, he is entitled to compensation for what he did. But in order to know to what extent we are required to know how much demand on Mr. Hallberg's time this Richman trust made.

Mr. Whyte: I realize that, your Honor has ruled that. [135] I am not objecting.

The Court: All right. I am just letting you know that I do think it is proper for that purpose. If, for instance, Mr. Hallberg had held this position with the County of Orange for 10 years, and the court asked him to take a receivership and he had to leave the County of Orange because the receivership was taking up all of his time and would come in here and say, "I worked 20 hours a day on that receivership," that would entitle him to a different compensation than a business which would not be a full time employment.

Mr. Whyte: May I proceed?

The Court: Yes.

### Cross Examination

Q. (By Mr. Whyte): I understood you to say, Mr. Byrum, that the preparation of the data with respect to the appraising and assessing took about as much time as the actual appraisal work in the field, is that correct?

A. I would think so, yes.

Q. Do you know, of your own knowledge, whether Mr. Hallberg prepared much of the data

(Testimony of Louis B. Byrum.)

necessary towards appraisal work at his home in the evenings?

A. I couldn't answer that question, I don't know.

Q. Are you acquainted with the fact that only last night Mr. Hallberg visited a large restaurant in the County [136] of Orange after dinner, in connection with the performance of his duties for your office?

A. I am aware of the fact he did.

Q. Yes.

A. He turned in a report on it this morning. I can't swear that he did it last night, but a report was turned in this morning on that business.

Q. Did the report show that the work was done some time after 5:00 o'clock last night?

A. I wouldnd't be able to swear to that.

Mr. Enright: I object on the ground the report is the best evidence of what it states.

The Court: Objection sustained.

Mr. Whyte: The facts will speak for themselves, because Mr. Hallberg was in court all day yesterday. The court can draw its own conclusion as to when he performed that work.

Q. (By Mr. Whyte): You mentioned, in connection with the preparation of the data necessary for Mr. Hallberg's work, there is no requirement that that need be done in the office, is there, Mr. Byrum? A. There is not.

Q. You mentioned a conversation with Mr. Hallberg before he accepted employment at your office

(Testimony of Louis B. Byrum.)

on or about December 7, 1953. Did he tell you at that time that he had prior commitments with reference to a receivership in the [137] Federal courts?

A. He did not, not that he had a receivership. He told me that he had prior commitments, other things that he had to clear up.

Q. What did you say to him? Did you tell him that that was perfectly all right?

A. I might just—you want me to answer the question? I would like to say that quite often when you employ a person——

Mr. Enright: I move to strike what they quite often do. The question is what was the conversation at that time.

The Witness: I don't remember.

The Court: Motion granted.

Q. (By Mr. Whyte): You answered you don't remember, Mr. Byrum?

A. Yes; I don't remember.

The Court: May I ask one question? Is Mr. Hallberg now required to devote his full time, or, to put it another way, is he now allowed at this time to have outside employment? Do you understand what I mean?

The Witness: To have outside employment when he is working for the County of Orange?

The Court: Yes.

The Witness: There is nothing in the—I really don't know. [138]

The Court: I understand there are some Federal

(Testimony of Louis B. Byrum.)

offices which require persons taking employment there to not have any other employment. There are some municipalities which have those requirements, with respect to peace officers and so on. They want to have their full energy devoted to the requirements of the position.

I wondered if this position which Mr. Hallberg is in has that requirement as of this time.

The Witness: I don't remember just what the terms of the county ordinance in that respect are.

Mr. Whyte: I have no further cross examination.

The Court: Redirect?

Mr. Enright: No, I have no questions.

The Court: May this witness be excused?

(Witness excused.)

Mr. Enright: Mr. Hallberg.

### ROY E. HALLBERG

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

#### Cross Examination—(Continued)

Q. (By Mr. Enright): I direct your attention to the oath of Receiver constituting a part of the files in this action, and to the fact it is filed, dated December 2, 1953.

That is the day on which you took your office, is it not? [139]

A. I believe that it was the same date.

(Testimony of Roy E. Hallberg.)

Q. That was a Wednesday before December 7, 1953? Or, we can check it from the calendar, of which I think the court takes judicial notice.

You had been out directing the managers of the apartment houses before you signed your oath on December 2, 1953, hadn't you?

A. We had gone out to advise them that the management was going to be invested in a Receiver.

Q. You did more than advise them, you took the money from two or three of the five apartment managers?

A. Two of them, yes.

Q. Did you tell his Honor, Judge Tolin, at the time you filed your oath here on December 2, 1953, a Wednesday, that you were to become a permanent employee of the County of Orange, commencing Monday, December 7th?

A. I didn't—

Mr. Whyte: Objected to as immaterial, irrelevant.

The Court: Overruled.

Mr. Enright: Will you read the question?

(The question was read.)

The Witness: I knew nothing about it.

Q. (By Mr. Enright): You heard the testimony of Mr. Byrum—

A. At the time we filed that— [140]

Q. Pardon me just a moment, Mr. Hallberg. May I finish my question?

A. Certainly.

Q. You heard his testimony, in which he stated that on Wednesday before you went to work on De-



(Testimony of Roy E. Hallberg.)

cember 7th, that he talked to you concerning your going to work on the following Monday?

Did you hear him testify to that?

A. I did not hear him testify that was Wednesday morning before I went to work.

Q. Tuesday or Wednesday, then, before you went to work? A. No.

Mr. Enright: I will stand on the record.

Q. (By Mr. Enright): You did have a conversation with him before you did go to work, didn't you?

A. I had a conversation before I went to work, yes.

Q. You went to work on December 7, 1953, isn't that clear? Can we agree on that?

A. Went to work where?

Q. County of Orange.

A. No,—I am sorry. December 7th, yes.

Q. Now, that was on a Monday, wasn't it?

A. That was on a Monday, correct.

Q. Now, the previous week you had a conversation with Mr. Byrum, as he testified to here on the witness stand, [141] didn't you?

A. That is correct.

Q. Now, directing your attention, Mr. Hallberg, to your employment previously to going to work for the County of Orange, you were employed during the period of September 1952 to October 1953 by the Narmco Company at Costa Mesa?

A. That is correct.

(Testimony of Roy E. Hallberg.)

Q. Your rate of compensation was \$350.00 a month? A. That is correct.

Q. And that company was engaged in the business of manufacturing plastic fishing poles?

A. That is correct.

Q. Before going to work for that company you were employed by the Morgan Construction Tooth Company? A. Yes.

Q. For the period of May or June 1951 through Christmas day or through December of 1951, isn't that correct? A. That is correct.

Q. Your rate of compensation there was \$100.00 a week.

A. That was not compensation, that was a drawing account.

Q. It was a drawing account as a result of your having invested \$18,000.00 in the purchase of stock in the Morgan Construction Tool Company?

A. Both the president and I took a hundred dollars a [142] week as a drawing account.

Q. You invested \$18,000.00 in the company before you mentioned taking this drawing account, isn't that right? A. I don't see—

The Court: Was the drawing account against earnings of the company or against salaries, or commissions, or what?

The Witness: It was mostly against possible earnings of the company.

Q. (By Mr. Enright): Now, you did make an investment of \$18,000.00 in the company before you commenced drawing this hundred dollars a week,

(Testimony of Roy E. Hallberg.)

isn't that right? A. That is correct.

Q. Do you know a G. T. Gilliam of Altadena, California? A. I know of him.

Q. Is his business that of selling his services as an efficiency expert? A. That is correct.

Q. Did you, before going to work with Morgan Construction Tooth Company, work for a period of time or attempt to work for a period of time with Mr. Gilliam, in carrying on his business of consulting with business concerns?

A. My connection up there was more or less as a helper and—or giving him aid. I did not do any of the actual work out in the field. You asked me that question before. [143]

Q. In your deposition, and you did not remember it at that time?

A. I said no, definitely not; I didn't know what you asked me.

Q. Perhaps then, my words did not convey the exact act or thing you did. Now, will you explain what you did do, if that will aid you in answering the question? I do not want to limit you by a question.

A. The assistance I gave him was organizing a group of individuals to help and assist him in his actual work. At that time I was not capable of any sustained work.

The Court: You had some physical difficulty?

The Witness: Yes, I have been bothered for several years with a bad back that incapacitated

(Testimony of Roy E. Hallberg.)

me; over months on end I was in bed, and the times I got up were limited.

I don't do any physical work, and finally had an operation.

Q. (By Mr. Enright): Now, during that period of time that you were carrying on the activities, as you have described them, with Mr. Gilliam, you acquired a lot known as 85 Glen Summer Road in Pasadena, at about that time?

A. If I remember correctly, I had the lot.

Q. Well, you acquired the lot at 85 Glen Summer Road on May 29, 1947, being Document 901 of the official records of the offices of the County Recorder's office? Does that [144] help you at all in fixing the date?

A. Yes, that is approximately right.

Q. Did you build a house there? A. I did.

Q. And you sold that house on February 19, 1948? A. Approximately.

Q. Now, during that period of time you also acquired a lot at 90 Glen Summer Road on October 30, 1947, being Document No. 146 of the official records of the County Recorder's office?

A. That is correct.

Q. And you sold that lot and the house you built on it on June 17, 1952?

A. That is approximately correct, yes.

Q. Now, before acquiring the lot on April 29, 1947, you had been employed by the Garrett Company in New York for a period of 13 years, hadn't you? A. That is correct.

(Testimony of Roy E. Hallberg.)

Q. And that 13-year period covered the time from about 1932 or '33 to 1947?

A. That is correct.

Q. And your duties with the Garrett Company pertained to the marketing of wines?

A. That is correct.

Q. In no manner did your duties to the Garrett Company [145] pertain to the operating of apartment houses? A. No; that is correct.

The Court: What was your compensation there?

The Witness: Well, the earnings ranged up to about \$40,000.00 a year net.

The Court: What do you mean by "net"?

The Witness: After I paid my expenses and whatever other expenditures had to be made.

The Court: You don't mean after taxes?

The Witness: No.

Q. (By Mr. Enright): You terminated that employment and came to California about March of 1947? A. That is correct.

Q. And this \$40,000.00 a year you refer to was monies you received in the sale of wine or directing the sale of wine in and about the New York area?

A. Directing the sale of wine throughout the New York area, Metropolitan New York area and in New York State.

Q. Including Brooklyn?

A. Well, most people don't think Brooklyn is a part of the United States.

Q. Well, I do. Now, in any event, the sale of wine had nothing to do with the management of



(Testimony of Roy E. Hallberg.)

apartment houses, did it?           A. Right. [146]

Q. The first apartment house that you had any connection with in California was at 509 Fair Oaks Boulevard, an apartment house in Pasadena?

A. I never had a building at 509.

Q. 1509. I misread my notes. Is that right?

A. That is correct.

Q. You acquired that house December 20, 1949, being the deed recordation of Document 116, on that date, the official records of Los Angeles County?

A. That is approximately correct.

Q. It was a 14-unit apartment?           A. 16.

Q. You yourself owned it, did you?

A. I did.

Q. And you hired a manager?           A. Correct.

Q. Your mother-in-law?           A. That is right.

Q. And you disposed of that apartment house on November 29, 1950, being Document No. 1037 of the official records of Los Angeles County?

A. Approximately that.

Q. So for approximately 11 months you were owner of an apartment house at that address in Pasadena, California, or South Pasadena? [147]

A. That is right, yes.

The Court: Did you ever do anything with respect to the management of it?

The Witness: Well, we had a resident manager there, but so far as the actual managing the personal property there, doing things, ordering things done, yes, a lot of things I ordered done on the building.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): You ordered a lot of things done on these 14 apartments during the 11 months you had it? A. 16 apartments, yes.

Q. In addition to the 85 and the 90 Glen Summer Road and the 1509 Fair Oaks apartment house, you did acquire an unfurnished 4-family unit at 507 El Molino Street in Pasadena, California, on December 29, 1950, didn't you?

A. Approximately that time, yes.

Q. You and your wife jointly or individually, one of you owned that property alone, didn't you?

A. Well, I believe the record will state all these buildings were joint tenancies.

Q. Yes. And you still own that unfurnished 4-family unit?

A. There is one apartment there furnished.

Q. Those are all the properties that are in Los Angeles County that you had had any connection with when you were interviewed by this court?

A. In California? Yes.

Q. I said Los Angeles County. Because there are two down in Orange County, isn't that right, Mr. Hallberg? A. Yes.

Q. Those are single residences and one is a duplex or triplex?

A. One is a triplex and the other is a residence.

The Court: The triplex is residential property.

The Witness: Yes, it is in a residential neighborhood.

The Court: Are the triplexes for commercial use?

(Testimony of Roy E. Hallberg.)

The Witness: No.

The Court: Or for residence?

The Witness: It is for residences. People live in them. They are both furnished, incidentally.

Q. (By Mr. Enright): You moved to Orange County in 1952, didn't you?      A. Yes.

Q. And after moving down there, you built this triplex or single residence, which came first, will you explain that?      A. Triplex.

Q. And sold it, did you?      A. No.

Q. You still own it?      A. Still own it. [149]

Q. You built a single residence down there in Orange County then?      A. Yes, that is right.

Q. Now, you have recited, have you not, to the court your experience in dealing with real property in California, in answer to my previous questions?      A. Your previous questions, yes.

Q. The only business address you had, since you have come to California, was the address of the Morgan Construction Tooth Company in Pasadena, which you used during the period June or May 1951, to December 1951, isn't that correct?

A. I directed all my mail to my home.

Q. Well, did you advise his Honor before your employment that you did have a place of business over in Pasadena, a business address?

A. The address I used there was 509 South El Molino.

Q. This 4-family unfurnished residence property?      A. Yes, I received mail there.

(Testimony of Roy E. Hallberg.)

Q. And that you represented to the court as being a place of business for you, is that right?

A. Well, it was an apartment house. I don't recall that I mentioned that as a business address, though.

Q. I have reference to the statement made on November 30th of 1953, the date of your appointment, that it was [150] represented to the parties by the court that you had a business address in Pasadena.

I assume you made that representation to the court, did you not?

Mr. Whyte: Objected to as calling for something that is outside the presence of this witness. He wasn't a party to any conversation between the court and yourself, Mr. Enright.

Mr. Enright: He was there part of the time. I will verify whether he was there at that time.

Mr. Whyte: I ask you lay a foundation he was present at any such conversation and knew anything about it.

Q. (By Mr. Enright): Now, directing your attention, if I may step up to the witness stand, to the transcript of November 30, 1953, at page 10 of the transcript, line 11, is where you answered the statement of the court concerning your qualifications, with the words:

"Mr. Hallberg: That is correct."

Now, pursuing that transcript over to page——

Mr. Whyte: Just a moment, Mr. Enright.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Read any portions you want. I never misled a witness in my life.

I merely wanted to fix the point in that transcript on that day as being on page 10, that Mr. Hallberg was a witness in the chambers of this court at that time. [151]

Now, the representation concerning the business address was later on in the transcript, your Honor. It is on page 15.

Mr. Whyte: Well, if you are going to read into the record something standing alone, an answer by Mr. Hallberg, "That is correct," why, why don't you read the whole transcript, to show what he is answering, what "That is correct" has reference to?

I am going to request there be read into the record the whole conversation, to show what Mr. Hallberg was answering.

The Court: Mr. Whyte, I am going to consider what occurred at that time and place. I will read that transcript in connection with the matter now before me, before deciding the issue here.

I might also read some of the transcript of the principal trial in this action, since this proceeding is ancillary to it, and one can pick up a great deal of information concerning the properties managed from the transcript of the trial of the case.

Mr. Whyte: Thank you, your Honor. I wanted the court to have in mind what Mr. Hallberg was answering when he said, "That is correct."

The Court: We take evidence here, but I will



(Testimony of Roy E. Hallberg.)

read all these things before deciding this. There isn't going to be [152] any precipitant action.

Mr. Enright: I am disturbed, your Honor, about the making of a decision involving the reasonable value of this witness' services based upon evidence that is not presented herein, pursuant to the petition and the answer to the petition.

The Court: Are you objecting to the court's considering the evidence which was presented at the trial of Tidwell vs. Richman?

Mr. Enright: Yes. I believe it would be improper. I seriously make that point. Otherwise, we do not know upon what does the court base its decision.

The Court: I will tell you what I intend to consider from the record of that case. That record shows somewhat the character of the properties which came into the receivership. And I intend to consider that.

That record shows what was charged by Mr. Richman for the management of those properties. And it shows what experts, produced by Mr. Richman, thought would be a reasonable charge for the management of them. It shows what experts, called by Mrs. Tidwell, thought would be a reasonable amount, and it shows the general character of the property.

I think those matters I have alluded to may be properly considered. This proceeding cannot be isolated entirely [153] from the main action to which this is merely supplementary.

(Testimony of Roy E. Hallberg.)

Mr. Enright: My point being this, your Honor: That if the court is to consider the evidence in the main action, that it has just now stated, it would of necessity involve an examination into the qualification of the persons involved in the management fees.

The Court: Well, that was open to litigation in the main action and to a certain extent it was inquired into in the main action. No one waived their privileges of cross examination at the time of that trial.

We built up a transcript of several hundred pages. I don't propose to read it all, but I am going to refresh my memory on the parts to which I have referred in general terms here.

Mr. Enright: I had not quite completed my statement, your Honor.

The Court: All right.

Mr. Enright: My point was that the qualifications of those particular witnesses in their experience as property managers in this specific community alone was presented. And that would involve the whole transcript or the whole of the trial of the case, I am afraid.

And I submit it would be improper to go beyond this record we are developing here.

Q. (By Mr. Enright): Proceeding, now, Mr. Hallberg, [154] you do not deny that you did answer a question on page 10 of this transcript of November 30, 1953?

A. Correct.

(Testimony of Roy E. Hallberg.)

Q. So you were there in the chambers at the time you gave this answer? That is correct?

A. I was, yes.

Q. You remained in chambers after that answer, until at least myself left the chambers, because I was engaged in another trial?

A. So far as I know, I did.

Q. Now, directing your attention to page 15 of the transcript, commencing at line 3 through line 18, did you make the following statements:

“Q. (The Court): Yes. Now, if you gentlemen wish to consult with the Receiver whom I have indicated will be appointed, we will provide one of the rooms adjacent to the chambers for such consultation, so that you may orient him to immediately pending problems which you feel might enter into the employment he is about to assume.

“I know you have another engagement, Mr. Enright, but you might take just long enough to get an exchange of names, addresses and telephone numbers and the like. [155]

“I am going to suggest to Mr. Hallberg, whom I think has a place of business somewhere around—

“Mr. Hallberg. It is in Pasadena.

“The Court: And you live at Corona Del Mar?

“Mr. Hallberg. That is correct.”

You did make those statements at that time?

A. Yes. I was referring to 509 South El Molino.

The Court: Did you have any business there, other than the——

The Witness: The apartment house.

(Testimony of Roy E. Hallberg.)

The Court: —management of that building?

The Witness: The apartment building.

Q. (By Mr. Enright): That wasn't an apartment, was it, a 4-family unfurnished flat?

A. It is usually called an apartment building.

Q. Unfurnished, is that right?

A. One apartment is furnished.

Q. One unit is furnished. And there are four units in that building at 507 South El Molino?

A. That is correct.

Q. You call that an apartment?

A. I certainly do.

Q. All four of them were rented on November 30, 1953, weren't they? [156]

A. That is correct.

Q. The tenants were paying you rent?

A. That is right.

Q. And you call that your place of business, is that it?

A. I had access to a telephone there and also I received mail there.

Q. Now, directing your attention to your experience in Chicago, concerning the operation of properties, it was in the year 1930 or '31, isn't that correct?      A. '31, yes; 1930-31.

Q. It was for a period of one year?

A. More or less. I think it is more. But I am not positive. That is quite a few years ago.

Q. You were employed by Gus Each, E-a-c-h, is that correct?

A. No, it is just Eich, E-i-c-h.



(Testimony of Roy E. Hallberg.)

Q. Mr. Eich was a bondholder of certain bonds issued by a bank at Chicago, isn't that correct?

A. He was a bondholder and receiver.

Q. I hadn't reached the receivership yet, Mr. Hallberg. Now, the bank became defunct or closed, isn't that right, and Mr. Eich, by virtue of his bonds, took over some of those properties of the bank, which were securing his bonds, isn't that it?

A. That is correct. He took them over as Receiver, though.

Q. You had never acted as a Receiver at any time, yourself, until this court appointed you, had you?

A. That is correct. I was handling the properties in receivership.

Q. Did you at any time advise this court, before your appointment or on December 2nd, when you took your oath, that you contemplated rendering an eight-hour day's service to the County of Orange?

A. I didn't contemplate rendering service to the County of Orange at that time.

Q. The question is did you advise the court of your intention or contemplation of going to work for the County of Orange?

Mr. Whyte: Objected to as calling for, as assuming facts not in evidence. The witness has testified he didn't contemplate going to work for the County of Orange at that time.

The Court: The question is whether he told the court that he had such contemplation, which is a



(Testimony of Roy E. Hallberg.)

different thing, and I think you will allow that question.

The Witness: I couldn't have told——

The Court: You can just answer, did you or didn't you?

The Witness: No, I couldn't have. [158]

Q. (By Mr. Enright): You were appointed Receiver on Wednesday and went to work for the County of Orange on Monday, didn't you?

A. Yes. I had no knowledge of going to work for the county.

The Court: On the following Monday?

Mr. Enright: Yes.

The Witness: No.

Mr. Enright: Following Monday, December 7th. The court order here is December 2nd. He was appointed and took his oath.

Q. (By Mr. Enright): You never informed the court at all at any time about going to work for the County of Orange?

A. I didn't know I was going to work for the County of Orange.

Q. Did you inform the court after you went to work for the County of Orange?

A. Not that I recall.

Q. In fact, you had told no one that you were devoting eight hours a day as a part of your employment at the County of Orange until your deposition was taken?

A. May I have that again?

Mr. Enright: Read the question, please.

(Testimony of Roy E. Hallberg.)

(The question was read.)

The Witness: I would like to have you state that [159] a little differently. Will you state that a little differently, please?

The Court: You just answer that the best you can. If it is an incorrect proposition, you clear it up.

The Witness: I will have to ask——

Mr. Whyte: You have a right to explain your answer, Mr. Hallberg. Answer the question and explain, if necessary.

The Witness: I will have to ask the reporter to please read that again.

(The question was re-read.)

The Witness: That is correct, so far as I know.

Q. (By Mr. Enright): At the time you were requested to act as Receiver in this matter by the court, you had then intended to delegate most of your work to Miss Cosgrove, is that correct?

A. I had intended to delegate the housekeeping to Miss Cosgrove.

Q. Did you inform the court of your intention of delegating what you call housekeeping to your wife, Miss Cosgrove? A. No.

The Court: We have gotten away from that 1931 transaction. I thought you were going into it while we were at the point, so we wouldn't have to return to it again. But, as I recall the evidence, it has not been gone into. [160]

At what rate were you compensated for that work?

(Testimony of Roy E. Hallberg.)

The Witness: I was compensated on a basis dependent upon the rents received from the various properties. And I don't recall what the amounts were now.

The Court: Can you recall approximately what your annual income was from that source during the year that you occupied that position?

The Witness: Your Honor, I just don't recall.

The Court: Was that a full time employment?

The Witness: Yes.

The Court: Or did you have other—

The Witness: No. I was working there full time on all the buildings.

The Court: Were the buildings exclusively apartment buildings, or did they include other types?

The Witness: They included various types. They were apartment buildings, apartment hotel, ordinary two flats, three flats, a couple of bungalows. They were scattered all over the north side of—northwest side of Chicago.

The Court: How did they compare in type of building—I don't mean all of them—but were there any that were comparable in some way to the class of buildings which were involved in the Richman properties?

The Witness: Yes, there was one apartment hotel up in Logan Square and it had furnished units, elevator, refrigeration [161] service; the physical aspects of the building were quite similar.

(Testimony of Roy E. Hallberg.)

The Court: To which one of the Richman properties?

The Witness: I imagine that would be classed more along the lines of the Oliver Cromwell. It was in a fairly nice residential district and this was out on the boulevard in the fair-income bracket neighborhood.

The Court: Were most of the apartment buildings in that earlier experience of yours buildings in a lower class than were involved in the Richman trust?

The Witness: Not necessarily. I believe on the whole they were on a par. They were brand new buildings and they were out in new neighborhoods.

They were not in the fringe areas. They were substantial buildings, all of them.

Q. (By Mr. Enright): There was only one of the properties that was an apartment hotel, isn't that right?

A. There was only one large one. There were, as I recall,—

Q. Your principal duty was trying to collect the rents from those people in 1931? A. No.

Mr. Whyte: Would you finish your answer? As you recall what? May the court please allow the witness to finish his answer? [162]

The Court: Finish the answer.

The Witness: We had several smaller buildings, probably had 10, 12 little furnished apartments; but they were small buildings.

As far as the last question was concerned, it

(Testimony of Roy E. Hallberg.)

didn't include only collecting rents. It was a complete management.

Q. (By Mr. Enright): That was the problem in 1931, though, wasn't it, collecting rent?

A. That was one of many problems.

Mr. Enright: Now, is that all your Honor desires to ask concerning Chicago, bondholder's rights?

The Court: That is all I had in mind. I am not interested in the bondholder's rights.

I am interested in the type of service which this man rendered there, what his experience was.

Q. (By Mr. Enright): Now, directing your attention to Mrs. Hallberg's experience. She graduated from the University of Minnesota, is that right?

A. That is correct.

Q. During the period 1937-1942 she carried on a business which you describe as investment counselor in New York, is that right?

A. That is correct.

Q. And she had two clients, to wit, a Dr. Austin Flint and Cox. [163]

A. Well, I am not familiar with the names of the clients nor the clients themselves.

Q. Well, might I ask you——

A. As I understand it, that is correct.

Q. Yes. That is Mrs. Hallberg's statement, isn't it?

A. I say, as I understand, that is correct.

Mr. Whyte: Objected to as being directly contrary to the language of the deposition. The language of the deposition is——



(Testimony of Roy E. Hallberg.)

The Court: If he is using the deposition, he is using it as notes. What the question was, was whether she had two clients by those names.

Now, that is what I understood it to be, which would be perhaps foundation for inquiring as to the nature of the services rendered them.

Now, I don't know how many clients the deposition might show, and I don't care.

Mr. Whyte: Very well. If your Honor has obtained the impression they are only two of her clients, I am quite satisfied. Thank you.

Q. (By Mr. Enright): Do you know whether or not she had any clients in addition to those two I named? A. I don't know.

Q. So far as you are concerned, those are the only two clients she had, is that right? [164]

A. I can't answer that, because I don't know.

The Court: Well, Mrs. Hallberg is present in the courtroom. The court will ask her to be available as a witness here, if you want to interrogate into it.

Q. (By Mr. Enright): Now, I take it she same to California with you after—she terminated investment business counseling in 1942. I suppose World War II stopped it, is that it? You don't know why, but she did terminate, is that it?

A. That is right.

Q. She came to California with you in 1947?

A. That is correct.

Q. Now, her only experience in decorating residential properties before coming to California, so

(Testimony of Roy E. Hallberg.)

far as you know, was decorating your home in New York?

A. She happens to have taken a course and some work with an institute in New York, of art and design; I do know that.

Q. What is the name of this institute of art and design that you know of?

Well, I will withdraw the question, if by these 60 seconds or so you have not remembered.

Do you know anything else about this training she had concerning apartment properties, other than what you have stated as of that time—— [165]

A. She has had that training in it. She has been interested in it for a good many years, and she has proven herself to be quite capable.

Mr. Enright: I move to strike "she has proven herself to be quite capable."

The Court: Granted.

Q. (By Mr. Enright): Now, after coming to California, her experience in so far as residential properties are concerned, was, shall we say, the mixing of the color and the decorations of 85 Glen Summer Road, that one?

A. I wouldn't say "mixing colors".

Q. She figured out the color scheme, is that it?

A. Color scheme, draperies, complete harmony of colors throughout the house.

Q. The same for 90 Glen Summer Road?

A. Yes.

Q. You have a swimming pool there, quite an elaborate home there at 90 Glen Summer Road?

(Testimony of Roy E. Hallberg.)

A. There was a swimming pool.

Q. Much better than the La Loma Apartments or of these apartments mixed up here?

A. It is a matter of opinion.

Q. Give us your opinion.

A. I lived over in Pasadena.

Q. You were managing, you undertook to manage in [166] excess of \$2,500,000.00 of apartments here. Is it because of this Glen Summer Road experience, that it qualified you, is that your opinion?

A. Of course not.

Q. It didn't help you at all or help her at all managing these apartments, did it?

A. Just additional experience.

Q. Now, the additional experience was the 14 units at 1507 Fair Oaks, is that the next experience she had? A. 16 units again.

Q. 16. Pardon me. For the 11 months, though.

A. She assisted me there quite materially.

Q. And the next experience would be the 4 units at El Molino Street? A. Yes.

Q. And the single residence and triplex in Orange County? A. Correct.

Q. Now, in addition Mrs. Hallberg has had experience as an employee of the County of Orange, too, hasn't she, in the hospital?

A. Oh, yes.

Q. When was that?

A. Oh, I think that was during the summer of 1953.

Q. You now have enumerated, have you not,

(Testimony of Roy E. Hallberg.)

Mrs. [167] Hallberg's business experience, other than that she does hold a real estate broker's license?

Mr. Whyte: If you can recall, Mr. Hallberg.

Mr. Enright: Thank you, Mr. Whyte.

The Witness: Well, her business experience with the County of Orange took in quite a bit of accounting work there and supervising of accounting.

Q. (By Mr. Enright): That was in 1953?

A. Yes.

Q. The next subject, Mr. Hallberg, will be the matter of the Oxyaire. You have that subject in mind?

A. Yes.

The Court: Do you want to take the morning recess, Mr. Enright, or do you want to go straight on through?

Mr. Enright: I believe I could organize it and expedite it, but if the witness wants to take a short recess——

The Court: We will take a brief recess.

(Short recess taken.)

Q. (By Mr. Enright): Among the files that were turned over to you by Mr. Richman on or about December 3 or 2, 1953, was one involving the Air Pollution Control, Inc. contracts?

A. That is correct.

Q. Now, I have shown this letter dated December 1, 1953, to counsel during recess. I want to use it to refresh [168] the witness' recollection.

Approximately a week, or, I will say not exceeding 10 days after December 1, 1953, you received

(Testimony of Roy E. Hallberg.)

an authorization from the County of Los Angeles Air Pollution District concerning installation of pollution control facilities at one or more of the apartment houses?       A. That is correct.

Q. Now, you next received, did you not, engineering drawings specifying the equipment that was to be installed by the Air Pollution Control, Inc., a corporation?       A. That is correct.

Q. Now, after receiving these files pertaining to the Air Pollution Control, authorization or order, you turned the files over to your attorney, Mr. Whyte, about December 24th?

A. That is correct.

Q. 1953. Did he then give you an opinion during December 1953, as to what were your duties as a Receiver with respect to the orders of the Air Pollution Control authority of the County of Los Angeles?

A. Yes, by the end of December he had given me that information.

Q. What was his opinion?

A. He stated that the contract signed was perfectly valid, to go ahead. [169]

Q. Now, on January 13, 1954, or within 24 hours after that date, you were informed by your agents, I assume, that a citation had been issued by the Air Pollution Control District, Los Angeles Control District, Los Angeles County, concerning one of the apartment houses, is that correct?

A. That is correct.

Q. Which apartment house was it?



(Testimony of Roy E. Hallberg.)

A. I think it was 418 South Normandie, the Cromwell.

Mr. Whyte: Speak up, Mr. Hallberg.

The Witness: I am sorry.

Mr. Whyte: What apartment house was it?

The Witness: Oliver Cromwell.

Q. (By Mr. Enright): And upon receiving that citation, was your next act that of phoning to the Air Pollution Control, Inc.?

A. That is correct.

Q. You kept a diary, did you not, of some of your activities as Receiver?      A. Definitely.

Q. And you have a copy of it there?

A. Yes.

Q. Now, this diary consists of notations you made about the time the occurrences are reported in the diary?      A. That is correct.

Q. And it consists of notations made after consultation [170] with your wife at home in the evening, is that right?

A. No. On this one, I think I was——

Q. Most of the entries in this diary are of that nature, are they not?

A. Not all of them, no.

Q. I didn't ask you about all of them. I just want to find out the method of keeping this diary.

It was generally in the evening when Mrs. Hallberg returned from Los Angeles that you would discuss the problems of the day and make notations in the diary, isn't that it, generally?

A. Those entries were made in the evening after

(Testimony of Roy E. Hallberg.)

we both returned home. It is a composite of the work, for the most part, that was accomplished during a particular day.

Q. And it does not reflect who accomplished the work? A. No, it does not.

Mr. Enright: I had two photostats made. If the witness desires to keep his own original, it is all right with me.

I would like to have a copy made a part of the record. What would be the convenience of counsel and the witness?

Mr. Whyte: Only one copy was furnished me. With the original and my copy of the deposition, if it is convenient to the court, I will surrender my own copy and make it a part of the record, simply getting along as best I can [171] without one.

Mr. Enright: Mr. Hallberg has a copy.

The Witness: I have the original.

Mr. Enright: I will take the original, if you wish.

The Court: The regular legal course, in the absence of some agreement between counsel otherwise, would be to have the original received into evidence.

Mr. Enright: I seek the convenience of the witness and his counsel as to whether I should take the original.

Mr. Whyte: May I interrogate the witness for a moment?

The Witness: Yes.

Mr. Whyte: Do you have anything else in that

(Testimony of Roy E. Hallberg.)

notebook which you desire to keep, Mr. Hallberg?

The Witness: Everything in here pertains to the activities on the receivership.

Mr. Whyte: You have no objection then——

Th Witness: No, none whatsoever.

Mr. Whyte: It will have to be placed in the court's files.

Mr. Enright: May it be marked next in order, defendants' exhibit.

Clerk: Defendants' B for identification.

(Said document was marked Defendants' Exhibit B for identification.)

Mr. Enright: I would like to offer it in evidence, as [172] I do not anticipate too many exhibits.

The Court: I understood it had been received in evidence.

Mr. Enright: Thank you, your Honor.

(Said document marked Defendants' Exhibit B was received in evidence.)



# Appointments & Memoranda

Date

Date

12/30

Monday

Thursday

12/13

9:30 Left Mr. Perkins office early  
10 Did not arrive until 11:14 AM  
11 Ray Garrison picked up on  
12 relations and his book kept  
13 and acq. method. strange  
14 will Mr. Perkins sent 2:30  
15 stopped payment on Mr. Duller  
16 Bill check on 12/13 not correct &  
17 made out to Perkins (Empire)

DEC. 1

Tuesday

Friday

12/14

9 Met Mr. Duller over at Over  
10 insurance jobbers' office  
11 given name of insured  
12 arranged for office at Over  
13 Connell's place - made  
14 calls on all Briggs collect  
15 rents & inspecting (same)  
16 made deposit at 4 pm  
17 Bank

Wednesday

Saturday

Sunday

12/12

12/15

9 Arranged for George Blum  
10 City of New York & White as Pecuni  
11 to act as Quereu after Bond  
12 after on Bond approved  
13 exchanged - 75000  
14 fidelity deposit to  
15 1st Nat. @ 3000  
16 have expense by approved bonds  
17 and begin





BEGINNING  
MONDAY

Date Dec 7

## Appointments &amp;

## Memoranda

ENDING  
SUNDAY

Date Dec 13

Monday		Thursday	
9	Make Collection. Checked funeral: money for painting and decorating shroud	9	Met Haines at 9 A. inspect apt 301 404. 304 3.00. To Rant store with Haines
10		10	
11	Box of Lati lat is returned	11	
12	Compensation with Dolly but removed girl personal Average from Perry	12	
13		13	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
26		26	
27		27	
28		28	
29		29	
30		30	
31		31	
32		32	
33		33	
34		34	
35		35	
36		36	
37		37	
38		38	
39		39	
40		40	
41		41	
42		42	
43		43	
44		44	
45		45	
46		46	
47		47	
48		48	
49		49	
50		50	
51		51	
52		52	
53		53	
54		54	
55		55	
56		56	
57		57	
58		58	
59		59	
60		60	
61		61	
62		62	
63		63	
64		64	
65		65	
66		66	
67		67	
68		68	
69		69	
70		70	
71		71	
72		72	
73		73	
74		74	
75		75	
76		76	
77		77	
78		78	
79		79	
80		80	
81		81	
82		82	
83		83	
84		84	
85		85	
86		86	
87		87	
88		88	
89		89	
90		90	
91		91	
92		92	
93		93	
94		94	
95		95	
96		96	
97		97	
98		98	
99		99	
100		100	



ENDING  
SUNDAY

W E E K L Y  
M A T

# Appointments & Memoranda

W E E K L Y  
M A T

BEGINNING  
MONDAY

Date

Date

Monday		Thursday	
9 AM	PM	9 AM	PM
10 Shopped Brothers and 301 PM		10 Spent day visiting, talked with	
11 Brother's Brother		11 Bulls and spoke for private on	
12 and relations reported damage		12 future methods of Annas Bomer	
13 On Saniter at 4 PM on		13 Working Books	
14 for a paper		14 Checked ins	
15 Brought for H. H. H.		15 Talked with Jim	
		16 2 City of N. H. H.	
		17 1/2 City of N. H. H.	
		18 1/2 City of N. H. H.	
		19 1/2 City of N. H. H.	
		20 1/2 City of N. H. H.	
		21 1/2 City of N. H. H.	
		22 1/2 City of N. H. H.	
		23 1/2 City of N. H. H.	
		24 1/2 City of N. H. H.	
		25 1/2 City of N. H. H.	
		26 1/2 City of N. H. H.	
		27 1/2 City of N. H. H.	
		28 1/2 City of N. H. H.	
		29 1/2 City of N. H. H.	
		30 1/2 City of N. H. H.	
		31 1/2 City of N. H. H.	
		32 1/2 City of N. H. H.	
		33 1/2 City of N. H. H.	
		34 1/2 City of N. H. H.	
		35 1/2 City of N. H. H.	
		36 1/2 City of N. H. H.	
		37 1/2 City of N. H. H.	
		38 1/2 City of N. H. H.	
		39 1/2 City of N. H. H.	
		40 1/2 City of N. H. H.	
		41 1/2 City of N. H. H.	
		42 1/2 City of N. H. H.	
		43 1/2 City of N. H. H.	
		44 1/2 City of N. H. H.	
		45 1/2 City of N. H. H.	
		46 1/2 City of N. H. H.	
		47 1/2 City of N. H. H.	
		48 1/2 City of N. H. H.	
		49 1/2 City of N. H. H.	
		50 1/2 City of N. H. H.	
		51 1/2 City of N. H. H.	
		52 1/2 City of N. H. H.	
		53 1/2 City of N. H. H.	
		54 1/2 City of N. H. H.	
		55 1/2 City of N. H. H.	
		56 1/2 City of N. H. H.	
		57 1/2 City of N. H. H.	
		58 1/2 City of N. H. H.	
		59 1/2 City of N. H. H.	
		60 1/2 City of N. H. H.	
		61 1/2 City of N. H. H.	
		62 1/2 City of N. H. H.	
		63 1/2 City of N. H. H.	
		64 1/2 City of N. H. H.	
		65 1/2 City of N. H. H.	
		66 1/2 City of N. H. H.	
		67 1/2 City of N. H. H.	
		68 1/2 City of N. H. H.	
		69 1/2 City of N. H. H.	
		70 1/2 City of N. H. H.	
		71 1/2 City of N. H. H.	
		72 1/2 City of N. H. H.	
		73 1/2 City of N. H. H.	
		74 1/2 City of N. H. H.	
		75 1/2 City of N. H. H.	
		76 1/2 City of N. H. H.	
		77 1/2 City of N. H. H.	
		78 1/2 City of N. H. H.	
		79 1/2 City of N. H. H.	
		80 1/2 City of N. H. H.	
		81 1/2 City of N. H. H.	
		82 1/2 City of N. H. H.	
		83 1/2 City of N. H. H.	
		84 1/2 City of N. H. H.	
		85 1/2 City of N. H. H.	
		86 1/2 City of N. H. H.	
		87 1/2 City of N. H. H.	
		88 1/2 City of N. H. H.	
		89 1/2 City of N. H. H.	
		90 1/2 City of N. H. H.	
		91 1/2 City of N. H. H.	
		92 1/2 City of N. H. H.	
		93 1/2 City of N. H. H.	
		94 1/2 City of N. H. H.	
		95 1/2 City of N. H. H.	
		96 1/2 City of N. H. H.	
		97 1/2 City of N. H. H.	
		98 1/2 City of N. H. H.	
		99 1/2 City of N. H. H.	
		100 1/2 City of N. H. H.	





[illegible]



BEGINNING MONDAY  
 Date 2.1  
 Appointments & Memoranda  
 ENDING SUNDAY  
 Date 3.1

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
9 AM Made phone calls 10 AM Chas. F. M. Vassini 11 AM Talked with 12 PM Tring with Mrs 1 PM W. C. Coranelli 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM 12 PM	9 AM 10 AM 11 AM 12 PM 1 PM 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM 12 PM	9 AM 10 AM 11 AM 12 PM 1 PM 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM 12 PM	9 AM 10 AM 11 AM 12 PM 1 PM 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM 12 PM	9 AM 10 AM 11 AM 12 PM 1 PM 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM 12 PM	9 AM 10 AM 11 AM 12 PM 1 PM 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM 12 PM	9 AM 10 AM 11 AM 12 PM 1 PM 2 PM 3 PM 4 PM 5 PM 6 PM 7 PM 8 PM 9 PM 10 PM 11 PM 12 PM
1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12
1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12



✓AM  
BEGINNING  
MONDAY  
Date 4

Date 4

Date . . . 9

Thursday

**Monday**

	A.M.	P.M.	E.T.	
9	Met Dave, Love	met Lous feeding	9	Met Harry Gray, Tell Mann
10	2 <sup>nd</sup> 4 <sup>th</sup> & N <sup>th</sup>	Met Cross-shore	10	Pr: 10 W.A. aft. sunset his
11	30 kids below etc	at G. Lane &	11	bid + proceed on 101-112-414
12	<del>Collected</del>	Painting	12	404-545-304 + Mopri
1	Time Street	Planned Kelly	1	Seven Ead. for O.C.
2	Parade of Always	for Dick	2	Quintess eliminated on
			3	100 Lincia melting at O.C. - Picked to Edging
			4	W.S. to cut off <sup>unburning</sup> machine

8

Friday

Tuesday

[illegible]

Chamber Bills

1000

EVENING

EVENING

1

9

	Wednesday	Thursday	Friday	Saturday	Sunday
9	Co's make rounds	Best FM is up			
10	Spoke away 8 Messengers	pair on base			
11	in 45 around F-7s.	Companions left?			
12	lost 3-24 x 4 7/8.	gunfire - new			
13	Some of FM Single	Went out in Switzerland			
14	one something in	back of the trap			
15	him for a week (actually				
16	out to many Single)				
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					

EVENING

## DISCUSSION

-Clip for Current Week





*from*  
 BEGINNING  
 MONDAY  
 Dd/11

Appointments & Memoranda

Monday Thursday

WEEKLY  
 BEGINNING  
 SUNDAY  
 Dd/14

Day	Time	Activity	Notes
Monday	9 AM	Pick up	Just pass house
Monday	10 AM	Problems at R. House	Leaving 2h at school
Monday	11 AM	Meeting	
Monday	12 PM	Revised lettering group	
Monday	1 PM	Green - Ellen's coat	
Monday	2 PM		
Monday	3 PM		
Monday	4 PM		
Monday	5 PM		
Tuesday	9 AM	Music problems	
Tuesday	10 AM	Sp. with Kelly	
Tuesday	11 AM	Mr. & Mrs. Kelly	
Tuesday	12 PM		
Tuesday	1 PM		
Tuesday	2 PM		
Tuesday	3 PM		
Tuesday	4 PM		
Tuesday	5 PM		
Wednesday	9 AM	Used Ann to	
Wednesday	10 AM	Rec'd notice	got on my girl
Wednesday	11 AM	Mr. Oliver's	special display?
Wednesday	12 PM	Mr. Oliver's	not received
Wednesday	1 PM	Mr. Oliver's	not received
Wednesday	2 PM	Mr. Oliver's	not received
Wednesday	3 PM	Mr. Oliver's	not received
Wednesday	4 PM	Mr. Oliver's	not received
Wednesday	5 PM	Mr. Oliver's	not received
Thursday	9 AM	Mr. Oliver's	not received
Thursday	10 AM	Mr. Oliver's	not received
Thursday	11 AM	Mr. Oliver's	not received
Thursday	12 PM	Mr. Oliver's	not received
Thursday	1 PM	Mr. Oliver's	not received
Thursday	2 PM	Mr. Oliver's	not received
Thursday	3 PM	Mr. Oliver's	not received
Thursday	4 PM	Mr. Oliver's	not received
Thursday	5 PM	Mr. Oliver's	not received
Friday	9 AM	Mr. Oliver's	not received
Friday	10 AM	Mr. Oliver's	not received
Friday	11 AM	Mr. Oliver's	not received
Friday	12 PM	Mr. Oliver's	not received
Friday	1 PM	Mr. Oliver's	not received
Friday	2 PM	Mr. Oliver's	not received
Friday	3 PM	Mr. Oliver's	not received
Friday	4 PM	Mr. Oliver's	not received
Friday	5 PM	Mr. Oliver's	not received
Saturday	9 AM	Mr. Oliver's	not received
Saturday	10 AM	Mr. Oliver's	not received
Saturday	11 AM	Mr. Oliver's	not received
Saturday	12 PM	Mr. Oliver's	not received
Saturday	1 PM	Mr. Oliver's	not received
Saturday	2 PM	Mr. Oliver's	not received
Saturday	3 PM	Mr. Oliver's	not received
Saturday	4 PM	Mr. Oliver's	not received
Saturday	5 PM	Mr. Oliver's	not received
Sunday	9 AM	Mr. Oliver's	not received
Sunday	10 AM	Mr. Oliver's	not received
Sunday	11 AM	Mr. Oliver's	not received
Sunday	12 PM	Mr. Oliver's	not received
Sunday	1 PM	Mr. Oliver's	not received
Sunday	2 PM	Mr. Oliver's	not received
Sunday	3 PM	Mr. Oliver's	not received
Sunday	4 PM	Mr. Oliver's	not received
Sunday	5 PM	Mr. Oliver's	not received



Appointments & Memoranda

Jan BEGINNING MONDAY  
Date 18

Date	Day	Time	Activity	Notes
19	Monday	9 AM	Made boards	
		10 AM	Installed Chops	
		11 AM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	
		11 PM	Worked with	
		12 PM	Worked with	
		1 PM	Worked with	
		2 PM	Worked with	
		3 PM	Worked with	
		4 PM	Worked with	
		5 PM	Worked with	
		6 PM	Worked with	
		7 PM	Worked with	
		8 PM	Worked with	
		9 PM	Worked with	
		10 PM	Worked with	





# Appointments & Memoranda

WEEK AT  
BEGINNING  
SUNDAY  
Date 28

WEEK AT  
BEGINNING  
MONDAY  
Date 25

Monday		Thursday	
9 AM	PM	9 AM	PM
9 Mail Remade			
10 11:15 - Check 119			Office phone
11 Check 119			many problems
12 Check 119			check 119
13 Check 119			check 119
14 Check 119			check 119
15 Check 119			check 119
16 Check 119			check 119
17 Check 119			check 119
18 Check 119			check 119
19 Check 119			check 119
20 Check 119			check 119
21 Check 119			check 119
22 Check 119			check 119
23 Check 119			check 119
24 Check 119			check 119
25 Check 119			check 119
26 Check 119			check 119
27 Check 119			check 119
28 Check 119			check 119
29 Check 119			check 119
30 Check 119			check 119
31 Check 119			check 119
32 Check 119			check 119
33 Check 119			check 119
34 Check 119			check 119
35 Check 119			check 119
36 Check 119			check 119
37 Check 119			check 119
38 Check 119			check 119
39 Check 119			check 119
40 Check 119			check 119
41 Check 119			check 119
42 Check 119			check 119
43 Check 119			check 119
44 Check 119			check 119
45 Check 119			check 119
46 Check 119			check 119
47 Check 119			check 119
48 Check 119			check 119
49 Check 119			check 119
50 Check 119			check 119
51 Check 119			check 119
52 Check 119			check 119
53 Check 119			check 119
54 Check 119			check 119
55 Check 119			check 119
56 Check 119			check 119
57 Check 119			check 119
58 Check 119			check 119
59 Check 119			check 119
60 Check 119			check 119
61 Check 119			check 119
62 Check 119			check 119
63 Check 119			check 119
64 Check 119			check 119
65 Check 119			check 119
66 Check 119			check 119
67 Check 119			check 119
68 Check 119			check 119
69 Check 119			check 119
70 Check 119			check 119
71 Check 119			check 119
72 Check 119			check 119
73 Check 119			check 119
74 Check 119			check 119
75 Check 119			check 119
76 Check 119			check 119
77 Check 119			check 119
78 Check 119			check 119
79 Check 119			check 119
80 Check 119			check 119
81 Check 119			check 119
82 Check 119			check 119
83 Check 119			check 119
84 Check 119			check 119
85 Check 119			check 119
86 Check 119			check 119
87 Check 119			check 119
88 Check 119			check 119
89 Check 119			check 119
90 Check 119			check 119
91 Check 119			check 119
92 Check 119			check 119
93 Check 119			check 119
94 Check 119			check 119
95 Check 119			check 119
96 Check 119			check 119
97 Check 119			check 119
98 Check 119			check 119
99 Check 119			check 119
100 Check 119			check 119



BEGINNING  
MONDAY

Appointments &

Memoranda

8:30  
ENDING  
SUNDAY

Date 1

Date 4

Monday		Thursday	
9	10	1	2
M	9:00	1	3
O	10:00	4	4
N	11:00	5	5
D	12:00	6	6
A	1:00	7	7
Y	2:00	8	8
F.M. Check out Patterson		H.M. sent to Leland	
EVENING		F.M. sent to Leland	
2		F.M. sent to Leland	
Tuesday		Friday	
9	10	1	2
T	11	3	4
U	12	5	5
E	1	6	6
S	2	7	7
D	3	8	8
A	4	9	9
Y	5	10	10
EVENING		EVENING	
3		6	
Wednesday		Saturday	
9	10	1	2
W	11	3	4
E	12	5	5
D	1	6	6
N	2	7	7
E	3	8	8
S	4	9	9
D	5	10	10
A	6	11	11
Y	7	12	12
EVENING		EVENING	
8		10	



**THIS BEGINNING MONDAY**  
**Appointments & Memoranda**  
**Week** JANUARY  
**ENDING SUNDAY**  
**Date** 8  
**Date** 19

Monday		AM	PM	THURSDAY
9	Made Spoons	9	9	
10	XL cracked sent to Ann Hopkin	10	10	Wd. Had Car Air
11	5 books to select and change	11	11	at Canterbury
12	Confuting per	12	12	PA for Chestnut
13	7 M. 1220	13	13	
14		14	14	
15		15	15	
16		16	16	
17		17	17	
18		18	18	
19		19	19	
20		20	20	
21		21	21	
22		22	22	
23		23	23	
24		24	24	
25		25	25	
26		26	26	
27		27	27	
28		28	28	
29		29	29	
30		30	30	
31		31	31	
32		32	32	
33		33	33	
34		34	34	
35		35	35	
36		36	36	
37		37	37	
38		38	38	
39		39	39	
40		40	40	
41		41	41	
42		42	42	
43		43	43	
44		44	44	
45		45	45	
46		46	46	
47		47	47	
48		48	48	
49		49	49	
50		50	50	
51		51	51	
52		52	52	
53		53	53	
54		54	54	
55		55	55	
56		56	56	
57		57	57	
58		58	58	
59		59	59	
60		60	60	
61		61	61	
62		62	62	
63		63	63	
64		64	64	
65		65	65	
66		66	66	
67		67	67	
68		68	68	
69		69	69	
70		70	70	
71		71	71	
72		72	72	
73		73	73	
74		74	74	
75		75	75	
76		76	76	
77		77	77	
78		78	78	
79		79	79	
80		80	80	
81		81	81	
82		82	82	
83		83	83	
84		84	84	
85		85	85	
86		86	86	
87		87	87	
88		88	88	
89		89	89	
90		90	90	
91		91	91	
92		92	92	
93		93	93	
94		94	94	
95		95	95	
96		96	96	
97		97	97	
98		98	98	
99		99	99	
100		100	100	















(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Directing your attention to January 13, 1954, you made the entry that evening, did you not, as follows:

“Received notice re: Oliver Cromwell incinerator Oxyaire V. P. said he would handle with authorities. Urged him to get on our job. Said drawings not received.”

That was your entry for that day concerning the Oxyaire matter, wasn't it?

A. Part of it.

Q. Was there more? Read it, sir, if you will “Harrison”—Does that pertain to Roy Harrison —“to get them——”

A. “Reminded——”

Q. “——with a letter (outlined contents for letter)”, is that right?

A. That is right.

Q. At that time the drawings were a part of your files, weren't they? [173]

A. They were a part of the files, but they weren't supposed to me. Harrison had been instructed to send them on.

Q. Now, I call to your attention a letter dated January 22, 1954. Does the reviewing of this letter refresh your memory?

It wasn't until January 22, 1954, you did transmit the drawings to Oxyaire?

The Witness: Will you read the question, please, Miss Reporter?

(The question was read.)

The Witness: The instructions were given to Harrison better than a week prior to the sending

(Testimony of Roy E. Hallberg.)

out of that letter. The letter went out on that date. Do you want to get this in evidence?

Q. (By Mr. Enright): Your next activities concerning this situation by the public authorities, of this community, on that subject, occurred on January 27, 1954, when you communicated with your attorney, Mr. Whyte, that a criminal complaint had been issued. I don't think you have it in your notes, have you?

A. It is not in there.

Q. You didn't make an entry of that on that day. I would call to your attention Mr. Whyte's time sheet for January 27th, if he will make it available to you, and that might reveal you did communicate with him on that day. [174]

A criminal complaint was then pending against Mr. Richman and your manager?

Mr. Whyte: If I may show the witness my time sheet.

Mr. Enright: Oh, certainly. I just want to get the facts as to the performance of this receivership.

Mr. Whyte: My time sheets shows Mr. Enright telephoned, "Call from Harrison re: problems involved in preparing Receiver's first report. Also criminal citation for alleged violation of smog regulations".

The time sheet is dated January 27, 1954.

Q. (By Mr. Enright): Did you direct Harrison to communicate with Mr. Whyte?

A. No, on that date I did not.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Now, to complete the record, may it be stipulated that on Friday afternoon at 4:50 p.m., January 29th, your office informed Mr. Richman's office he would be in criminal court on February 1st on this citation, the following Monday?

Mr. Whyte: If you will allow me to refresh my recollection from my time slips.

Mr. Enright: Certainly.

Mr. Whyte: My time slip for the 29th shows certain entries in regard to this smog control matter. "Telephone call from Harrison re: Criminal citation for violation of smog regulations. Telephone call from Mrs. Hallberg re: [175] Efforts being made to dismiss criminal citation for violation of smog control ordinances. Telephone call to Mr. Hall in office of Air Pollution Control District re: Citation for violation of smog ordinances."

And the incident you mention is not noted on my time slip, but I recollect that some time between 4:00 and 5:00 o'clock in the afternoon I telephoned, I believe, both your office and Mr. Richman's office and was unable to locate either one of you, and left word at Mr. Richman's office that he was named as a defendant in a criminal complaint with reference to the incinerator at the Oliver Cromwell.

That the hearing was to be held the following Monday morning, February 1st, in one of the departments of the Municipal Court. Is that satisfactory?

Mr. Enright: Yes, that is satisfactory.

Q. (By Mr. Enright): Now, did you, Mr. Hall-

(Testimony of Roy E. Hallberg.)

berg, instruct your attorney to instruct Mr. Richman or myself not to talk to Mr. Harrison concerning this matter? A. I don't recall.

Q. You discharged Mr. Harrison after this smog incident, didn't you?

A. It just so happened it came about after that time, yes.

Q. It just so happens you were informed that Mr. Richman and I had gone out to see Mr. Harrison on the [176] Saturday, the 30th of January, you knew that, didn't you?

A. I didn't know that until several days after, but I found out inadvertently or a roundabout way you had been out there.

Q. And shortly thereafter Mr. Harrison was discharged, wasn't he? A. That is true.

Q. You, I assume, relied upon the advice of your attorney—strike that.

Did your attorney advise you in any manner as to the criminal aspects of this citation issued January 13, 1954?

A. I knew it was quite serious. I do not recall that I had any conversation with him about the criminal aspects of the situation.

Q. Are you limiting your answer, may I inquire, to what you personally heard Mr. Whyte say to you, or are you including communications by Mr. Whyte to your secretary, Mrs. Hallberg?

A. I am trying to recall any of my communications. I don't recall of any.

Q. Did Mrs. Hallberg inform you in any man-



(Testimony of Roy E. Hallberg.)

ner, between the period January 27th, that is, the date of the criminal complaint being filed, and February 1st date of this hearing over in Municipal Court, as to any advice she obtained from your attorney? [177]           A. No.

Q. Did you advise your attorney of the issuance of that citation on January 13, 1954?

A. Yes, as far as I know I did.

Q. Now, I have a few questions here that we may be able to clear up quite hurriedly, if you would have available to yourself your accounting.

Do you have a copy of it, Mr. Hallberg?

A. I don't know what you are referring to, Mr. Enright.

Q. That is the accounting you filed in court here. I will try and locate the original.

I direct your attention to page 3, line 17 through line 22, and to that portion of it appearing on line 19, where you state:

"Rendered and performed by him or his agents in carrying on the normal business and affairs of said former trust."

You have that portion in mind?           A. Yes.

Q. Now, by these words, "him or his agents", do you mean that the things that were alleged to have been performed in this petition were done by the agents or yourself?           A. That is correct.

Q. And there is no attempt on your part in this [178] petition to identify which one of the services enumerated in the petition was performed by your-



(Testimony of Roy E. Hallberg.)

self, as distinguished as being performed by an agent. A. That is correct.

Q. When you took office as Receiver, either before or after your qualifying as a Receiver, on December 2, 1954, you retained in your employ the five managers that had been running the apartment houses, didn't you? A. I did.

Q. You hired and retained Mr. Roy Harrison?

A. I did.

Q. Who had been acting as Mr. Richman's secretary?

A. I understood he was Mr. Richman's bookkeeper. That is all right.

Q. He took dictation quite quickly, didn't he, in your experience as a Receiver?

A. I didn't dictate to him. I wrote them out and told him what I wanted done.

Q. You would write your instructions out, is that it? A. Yes.

Q. In addition to Mr. Harrison, there were no changes in the personnel, other than your employing Mrs. Hallberg or her rendering services along with you, is that right?

A. In the office, yes, or under my control. There were other changes out in the field. [179]

Q. I am speaking now only of personnel, employees, full time employees, if I may put it that way, as distinguished from independent contractors, like plumbers and painters.

A. I appreciate that. There were changes out on some of the apartments.

(Testimony of Roy E. Hallberg.)

Q. But not in the managers, the five managers remained? A. That is correct.

Q. You didn't change those? A. No.

Q. You took Mr. Richman's bookkeeper?

A. Correct.

Q. And Mrs. Hallberg commenced assisting you, is that right? A. That is correct.

Q. Are there any other persons included in your words here, "him or his agents", than the five managers, Mrs. Hallberg and Mr. Harrison, that performed these things that you say you performed? A. No other than Mr. Whyte.

Q. Oh, yes. I take it he only went with you around to the apartments. He spent some time doing that, didn't he, about six hours, the first day, is that right?

A. Well, I don't know now. He went with me, yes, [180] that is true.

Q. Did you ask him what his rate of compensation would be? A. No.

Q. As a matter of fact, Mr. Whyte is your attorney in other litigation, isn't he?

A. Correct.

Q. That is, the Morgan Construction Tooth Company litigation filed back in 1952?

A. He is assisting me on that, yes.

Q. And he was not associated with O'Melveny & Myers until shortly before you were appointed Receiver, was he?

A. Will you state that question again?

Mr. Enright: Will you read the question, please?

(Testimony of Roy E. Hallberg.)

(The question was read.)

Mr. Whyte: Do you understand the question?

The Witness: No, I do not.

The Court: I don't, either. I wonder, is the question whether he was not associated until just before the receiver started, or is it something else?

Q. (By Mr. Enright): You are familiar with the fact, are you not, that on November 30, 1953, at the time the court rendered its decision the representation was made that Mr. Whyte had been until then, very recently, been associated with O'Melveny & Myers? [181]

A. That is correct.

Q. You, after that meeting, advised the court he was then leaving or had just left O'Melveny & Myers?

A. He had left a short while before.

Q. As a matter of fact, he had left, to your own knowledge, as early as January of 1952?

A. I don't know.

The Court: What difference does it make? We all have known Mr. Whyte around these courts for some time as being up here on behalf of O'Melveny & Myers?

What difference does it make whether he was there or with Gibson, Dunn & Crutcher or whether he was associated with you?

Of course, we wouldn't want an attorney associated with one of the parties litigants here or their counsel, but as to what firm he was with, I don't see that it makes much difference.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Well, it is a part of the representations that were made at that time, your Honor. I think he then stated, it is my understandings, he was then associated with that firm. I would not further investigate into the matter. That is the record.

The Court: I understood he had been but recently with that firm. What you mean by "recent" varies with different people and in different situations. [182]

I don't think it would make much difference to a court if he had been with them two years ago or whether he had been two months ago. He was at one time with that distinguished law firm.

Mr. Whyte: For the record, your Honor, I left O'Melveny & Myers as of January 1, 1953, having been there for almost exactly 10 years.

Mr. Enright: Now, for the record, I will quote from page 12 of November 30th transcript, line 6:

"The Court: What I understand he has in mind is the selection of an attorney who is about to leave them——

"Mr. Hallberg: He has just left.

"The Court: ——for the purpose of forming his own legal practice. What is his name, Mr. Hallberg?

"Mr. Hallberg: John Whyte. That is W-h-y-t-e."

Q. (By Mr. Enright): Did you discuss with or negotiate in any manner with Mr. Whyte as to what would be his compensation for rendering services to you as Receiver?           A. I did not.

(Testimony of Roy E. Hallberg.)

Q. Have you any arrangements or agreement with him as to his services in representing you in the Morgan Tooth Company litigation? [183]

Mr. Whyte: Objected to as completely immaterial, your Honor.

The Court: Sustained.

Mr. Enright: I understand there is a petition here seeking compensation on the part of Mr. Whyte. It is relevant to that.

The Court: Why? I am not going to allow Mr. Whyte anything except for services rendered in this case.

Mr. Enright: Is the court going to consider his rates of compensation in any manner in fixing that fee?

The Court: I am going to consider what, in good conscience, these parties should have, considering the services they rendered, the importance of the assignment, whether they carried it out well or whether they did not carry it out, the amount of harassment and vexation attending the duties of the position and so on.

Mr. Enright: I understand the law to be an element in fixing attorney's fees is the rates of compensation in the community.

The Court: I don't know what that Morgan case involves, and I am not going to take what he charged for services in that case as a guide for what he should get in this.

As to the going rate of payment of attorneys in the community, when they are appointed by a court



(Testimony of Roy E. Hallberg.)

to serve in capacities of this kind, I am more interested in that than I [184] am in what he received from Mr. Hallberg in some other case.

Q. (By Mr. Enright): Now, directing your attention to your petition, page 12 thereof, and to line 32, and what would be 33, my question is: You did not collect the rents for the days February 26, 27 and 28, 1954? A. I did not.

Q. Is that correct? A. I did not.

Q. And at the time you verified this petition, it was your estimate and belief that the amount was approximately \$2,000.00 that you had not collected?

A. That is an approximate amount. It may have been \$1,000.00, it may have been \$1,500.00, it may have been \$2,000.00.

There was no way I could tell when that rent would be due—or, would come in.

Q. As of February 26, 1954, or the morning of February 27, 1954, you had been informed of the terms and conditions of the order of this court, made on February 26, 1954, had you not?

The Witness: Have you got that in here, John?

Mr. Whyte: Yes. I don't find the order of this court of February 26, 1954, in this file. If I may look at my own file, I think I can locate it.

The Court: Counsel, we haven't finished that jury case [185] that held you up a little while. We are going to finish it this afternoon, except for instructions to the jury.

I will start instructing the jury at 9:30 tomor-

(Testimony of Roy E. Hallberg.)

row, and I will probably be through by 10:15 or so.

I think it would be safer if we figured on getting here at 11:00. We will begin this case tomorrow at 11:00 o'clock. Please let's not try to make a career of it. It is the sort of thing that should have been over by now. It is the sort of thing that is customarily handled on a Monday motion calendar.

I know there are several issues here. I haven't heard anything about the search you will want to make yet, and that seems to me to be the most important thing.

Mr. Enright: Could I ask a question then?

Q. (By Mr. Enright): How much compensation do you personally feel you should receive, Mr. Hallberg?

A. Well, in my petition I am leaving that entirely up to the court.

Mr. Enright: This, we understand, your Honor: They won't state, in accordance with the court rule. They have asked us to defend against what might be reasonable.

We have to get all the facts out. If they won't tell us what his time is worth, there is nothing we can do but develop all the facts.

The Court: We will stand in recess until 11:00 o'clock [186] tomorrow morning.

(Whereupon, at 12:00 o'clock noon, Thursday, May 13, 1954, an adjournment was taken to Friday, May 14, 1954, at 11:00 o'clock a.m.)

\* \* \* \* \* [187]

ROY E. HALLBERG

called as a witness on his own behalf, having been previously duly sworn, resumed the stand, and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Enright): Mr. Hallberg, I have caused to be placed before you the original order of this court bearing date February 26, 1954. Do you see that document?

A. I didn't hear your question.

Q. You have the document before you?

A. Yes, I have the document; I have the document, yes.

Q. Bearing in mind that is February 26, 1954, were you advised by your attorney on February 25, 1954, that the plaintiffs and the defendants in the main action had arrived at a settlement?

A. I had a conversation on that particular date regarding a conference that you were going to have the following day in court.

Q. That is right. Concerning the subject matter of settlement between the plaintiffs and the defendants?

A. I don't know what the subject matter was. It was just a conference you were leaving here.

Q. On the following day or on February 26th, were you informed by Mr. Whyte, your attorney, or by Mrs. Hallberg, of the fact that a settlement had been made?

A. I think a settlement was reported that evening.

(Testimony of Roy E. Hallberg.)

Q. Yes. And at that time were you advised by your attorney that the court had made the order of February 26, 1954, relieving you of your active duties of management?

A. That is correct.

Q. Of the five apartments, or the trustee assets?

A. Yes.

Q. Did your attorney also inform you that you were to only retain the money in the banks and under your control? A. I believe he did.

Q. Did he also inform you that the order was to be effective at 5:00 p.m. on Sunday, February 28, 1954? A. I don't recall that.

Q. Well, do you recollect that you were to have control of the whole property and all the assets until Sunday evening, or 5:00 o'clock, Sunday, February 28th?

A. I don't recall that. The only thing I remember was that the receivership was being terminated, and that came to me Friday night.

Q. Did you read that order there that is before you? I mean a copy of it, of course, the February 26, 1954 order?

A. I read it later, yes. [190]

Q. Did your attorney read it to you on February 26th, when you had a conversation with him in the evening?

A. I don't recall his having read it verbatim to me.

Q. But he did read the order, as best you can recollect, the substance?

(Testimony of Roy E. Hallberg.)

A. He gave me the sum and substance of it.

Q. Now, directing your attention to your first and final report and petition for allowance of fees, do you desire the original, or is there a copy available?

A. I have a copy in here (Indicating).

Q. You have already testified concerning the \$2,000.00 figure shown on page 12 of the petition, that is, the receipts for the days of February 26, 27 and 28, 1954?

A. That was an approximate—it was an estimate. It isn't factual.

Q. Well, it is your best judgment when you verified the petition?

A. That is correct.

Q. And based upon your acting as receiver in this matter, have you made an audit since then to ascertain the amount or done anything?

A. No.

Q. Now, directing your attention to Schedule B, the first page thereof, you will note that there is under the column, "Imprest Petty Cash" \$785.00, is that correct? [191]

A. That is correct.

Q. Now, as of February 26, 27, and as of 5:00 o'clock p.m., February 28, 1954, there was \$785.00 of petty cash, wasn't there, in the hands of your agents or yourself as Receiver?

A. Not necessarily.

Q. How did you ascertain this figure of \$785.00 that you have shown in your accounting?

A. That figure is the amount of cash that was



(Testimony of Roy E. Hallberg.)

on hand at each building for them to pay small out-of-pocket expenses.

Q. When you use the pronoun "them" you mean your managers or the managers in each building?

A. I am referring to the buildings that these amounts are credited to.

Q. But it would be the manager of each one of the buildings? A. That is correct.

Q. And they were your agents, were they not?

A. That is correct.

Q. That \$785.00 was under your control?

A. That is correct.

Q. You did not take possession of that \$785.00, you left it with the managers, is that correct?

A. That is correct. For one reason. That reason [192] being that that was a part of their working properties of the building.

Q. So far as you know, Mr. Hallberg, the plaintiff, Lyda Tidwell or her agent, Mr. Udall, or some one of her agents, still have that \$785.00, is that right?

A. So far as I know, yes. They have what represents \$785.00; either cash or receipts.

The Court: How did they get it?

The Witness: That was left in the building—the money was left in the building. There was an audit made of it. In the operation of the building there are a lot of expenditures made for small items, and they would have to have receipts or cash to make up the amounts as shown here. And they

(Testimony of Roy E. Hallberg.)

use that money for cashing checks, and things like that.

Q. (By Mr. Enright): As a matter of fact, you did, Mr. Hallberg, during the weekend of Friday, February 26th, through Sunday, February 28th, make out checks on the receivership account, to build up the amount of money that these managers had, to equal \$785.00? A. That is correct.

Q. You actually issued checks upon the receivership account?

A. That is correct. However, they may have still paid out that before the end of the month.

Q. Of course. I am only making a point that there [193] is \$785.00 under your control that can be accounted for.

Mr. Enright: Insofar as the rights of Lyda Tidwell and Frederick Richman are concerned, it is a charge against her that I feel this evidence clearly proves.

The Court: She got that amount of money or approximately that amount of money, which had come in, as I understand this witness, that he left in the apartment houses when he surrendered them, because he considered it part of operating cash in the drawer.

Mr. Enright: I appreciate that is what he considered it.

The Court: That doesn't settle to whom it belonged.

Mr. Enright: Yes. Nor does it, your Honor, I feel, settle the requirements of the court order and

(Testimony of Roy E. Hallberg.)

the stipulation upon which it was based, that he was to retain control of monies in bank and all monies under his control; and this is \$785.00 he did not retain.

Mr. Powsner: At this point I think that I should object for the record to this line of testimony, not so much for the purpose of excluding it from the record, but simply to register plaintiffs' point of view, that the several items, many of the items claimed as surchargeable amounts against the Receiver, are actually in dispute between the plaintiffs and defendants.

As Mr. Enright said he thinks this evidence establishes a charge against the plaintiff, not Mr. Hallberg, I think it [194] should be kept in mind these are items in dispute, which are to be determined in a subsequent proceeding, I believe a pre-trial set for June 18th, and I don't think they are to be determined or to be assessed against Mr. Hallberg in this proceeding, any of these items.

There are several items, whether or not they were paid out in violation of the order, the point is that the benefit, if there is a benefit, has accrued either to the plaintiff or to the defendant. And it is a matter of dispute between them, as to the amount of the funds to be divided between them, and as to who is to be surcharged for these various items. I don't think it is material to surcharging Mr. Hallberg.

The Court: It might be. The objection is overruled.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Now, directing your attention, Mr. Hallberg, to Exhibit IV-2 of your Schedule B, I call to your attention under the column "Other" the amounts of money as being "Mortgage Payment-Interest" \$627.72 and principal \$1,399.53.

Those two amounts total \$2,027.25 and represent a payment to the holder of the note secured by trust deed upon the Oliver Cromwell Apartments, is that correct?      A. That is correct.

Q. Now, the payment was due and payable on March 1, 1954, is that correct? [195]

A. That is correct.

Q. Now, you paid that by check dated February 27, 1954, did you not?

A. That is correct.

Q. It was received by the payee in March?

A. That is correct; should have been received there. It was mailed that day.

Q. We could quickly ascertain it.

A. The stamp on there doesn't necessarily mean it was received that day. It may have been held a day or two before it was deposited in the bank.

Q. Yes. But the previous payments you had made on this encumbrance you didn't pay—in the month of January you paid on a check issued January 3, 1954?

A. That is correct. As you recall, the funds were quite limited at that time, just having paid a fair-sized tax bill.

(Testimony of Roy E. Hallberg.)

Q. Would you like to see your statements of the bank balances?

A. I know what they are.

Q. I will show them to you and see how limited they were.

The Court: I am getting lost, Mr. Enright. Just what are you trying to prove now? I am off the path.

Mr. Enright: Well, perhaps it is collateral. The [196] witness is volunteering his reason for having paid the money.

The basic point involved is this: That there were Two Thousand Twenty-Seven Dollars and I think it is Twenty-Five Cents, whatever that exact amount is, that was paid out by the Receiver after the court order of February 26th, and that, too, is the sum of money which is paid to the holder of the encumbrance upon the Oliver Cromwell, being a payment due in March, and Lyda Tidwell has received the full benefit of that Two Thousand plus dollars out of this fund.

It, therefore, will be our position that, one, the Receiver violated the court order of February 26th, and, two, when and if issue is joined involving the dispute between Lyda Tidwell and Frederick Richman, under their contract of settlement dated in February 1954, that they will have to settle this difference out of the balance of the money on hand.

The Court: Your main point here is that this was money paid out of the trustee's fund for the benefit of Lyda?



(Testimony of Roy E. Hallberg.)

Mr. Enright: Yes, your Honor, that is the dollar effect of it.

The Court: And then there is a question then of whether Mr. Hallberg violated the court order in paying it.

Mr. Enright: Yes, your Honor. May I call it to a degree negligence on the part of Mr. Hallberg or his advisers in not properly advising him concerning the paying of that [197] money. That will be my position.

Mr. Whyte: If I may say something for just a moment.

The Court: I had gotten out of orientation to the line of testimony, and I asked counsel to direct my attention to the particular issue which he has done.

You want to direct it further?

Mr. Whyte: I wanted to correct a misstatement made by Mr. Enright, that this money was paid out after the court order became effective.

Mr. Hallberg was relieved of his duties of active management as Receiver at 5:00 o'clock p.m. on Sunday evening, February 28th.

This check, which has just been presented to him, was issued before that date, which conclusively answers any allegation that he paid it out in violation of the court order.

The Court: It brings up a question, doesn't it, as to whether you can pay a debt two days before it is due?

Mr. Enright: Yes.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: That was due on the 1st of March. The facts are undisputed on that.

The Witness: I wonder if, your Honor, I may make a statement here?

The Court: No.

Q. (By Mr. Enright): Now, as to your desire, as pointed out by Mr. White, to have monies on this encumbrance there on [198] their due date, I call your attention to this check No. 204 dated December 31, 1953, and ask you to examine the time it cleared, as to—and then tell us when you mailed that check in?

A. Again I can't tell you exactly when this was mailed. I have no way of telling. The check was made out on that date and I have no way of telling how long the recipient of the check held it before depositing it.

Q. You do know, don't you, Mr. Hallberg, this check was dated back to December 31st and was paid about the middle of January?

A. There is no way I can tell at this time.

Mr. Enright: I will develop it by another witness.

Q. (By Mr. Enright): Now, directing your attention, Mr. Hallberg, to your Schedule D, being an itemization of the creditors, you have the item of "Frederick I. Richman, Management Fee for November 1953 in amount claimed" in the amount of \$3,104.33.

You were informed of that operating claim of Mr. Richman for his services in November 1953,

(Testimony of Roy E. Hallberg.)

shortly after you became Receiver, weren't you?

A. There never has been any bill sent to me, any communication as to the amount Mr. Richman claimed for services rendered. Had I received that bill I would have turned it over to the court for decision, as to payment to be made. [199]

Q. My question was, were you informed?

A. No.

Q. You did not have a conversation with Mr. Richman at the time you took over the records?

A. He told me what he had been getting, but he never asked me for any of this money. That I stated up here as more or less a contingent liability.

Q. Now, directing your attention to the top of Schedule C, where you state, "Disbursements Made by the Receiver as Directed by the Court", as I understand this, Mr. Hallberg, you and Mr. Whyte had a game of golf on a Sunday, March 7, 1954, and in the evening you called Judge Tolin, is that correct?

A. That is correct.

Q. Now, did you inform Judge Tolin of the nature of these operating expenses or bills that you have itemized here, that you have disbursed?

A. I believe I did.

Q. Now, Mr. Whyte was there during the phone conversation?

A. He was.

Q. Did Mr. Whyte at that time inform you or previously inform you that the defendant, Mr. Richman's position was that these bills should not be paid?

(Testimony of Roy E. Hallberg.)

A. I don't actually recall. However, I do know that [200] I paid—we accumulated all these bills and I wanted to find out whether they should be paid.

Q. I appreciate your wanting to pay them, but I am only concerned with this question: Did you or did you not at that time inform Judge Tolin that there was a dispute between Martin, Hahn & Camusi, representing the plaintiff, and Joseph Enright, representing the defendant, concerning the payment of these bills?

A. I don't recall the conversation, but this must have been—there must have been some question in my mind in calling for instructions.

Q. Did Mr. Whyte also talk to Judge Tolin at that time?      A. He did.

Q. You were present during the conversation, in so far as you could hear what Mr. Whyte had to say?

A. I heard one-half of the conversation.

Q. Did you hear him advise Judge Tolin there was a dispute between the attorneys representing the respective parties concerning the payment of these bills?

A. I can't recall the conversation now.

Q. So far as you know, no attempt was made by yourself, as Receiver, or by your agent, your attorney, to communicate with myself, Mr. Enright, concerning this question on Sunday evening, March 7, 1954?

A. Will you state that question again, please?



(Testimony of Roy E. Hallberg.)

Mr. Whyte: Will you read it?

Mr. Enright: Read the question.

(The question was read.)

Q. (By Mr. Enright): Is that clear, Mr. Hallberg?

Mr. Whyte: As to what this man knows that his attorney did, he hasn't any way of knowing whether I communicated with you or not.

I'm going to object to the question in so far as it asks him for what action I took. I am the best witness as to that. That was done out of his presence.

Mr. Enright: I am not asking for what you did. I am asking for his knowledge as Receiver at this time.

The Witness: I can't recall.

Q. (By Mr. Enright): You did pay out \$6,121.40 as the result of this—after that telephone call, as shown on the schedules?

A. That is correct.

Q. Now, did Mr. Udall direct the managers of the apartment houses, which managers had been formerly employed by you, until 5:00 o'clock February 28, 1954, not to pay the weekend collections approximating \$2,000.00 to you?

A. He didn't tell me that, to me.

Q. No. Relate what you know on that subject matter, so we can expedite this, if we can.

A. As I understand it, on Sunday, he made the rounds [202] of all the apartments, and told them that the receivership had ended and he was in full charge.



(Testimony of Roy E. Hallberg.)

Q. And to pay the money to him?

A. And the inference was to pay it to him. We did not collect over the weekend and there was a good reason for it. In the first place, picked up all the ready cash——

Mr. Whyte: Mr. Hallberg, you have answered the question.

The Witness: Thank you.

Q. (By Mr. Enright): You were informed of this by Mrs. Hallberg, is that correct?

A. That is correct.

Q. When were you informed of that instruction given by Mr. Udall?      A. Monday.

Q. Now to revert back to this phone conversation on March 7, 1954. I assume you felt you knew Judge Tolin sufficiently well over the years or period of time you could call him on the phone for instructions, is that it?

A. Well, I felt that inasmuch as I was working in conjunction with the court I had a right to phone for further instructions.

Q. You had known Judge Tolin since the time you had moved on Glen Summer Road?

A. Known him casually, yes.

Q. He lived in the same block as you did on Glen [203] Summer Road?      A. That is right.

Q. Now, there is an item of compensation insurance, being a deposit of \$400.00, is that correct?

A. Yes.

(Testimony of Roy E. Hallberg.)

Q. I am quite sure that is the exact amount. Have you received any refund on that deposit?

A. I imagine the records will show whether a refund came in.

Q. It isn't shown in your accounting, I am sure, Mr. Hallberg.

Have you done anything since filing the accounting concerning that refund?

A. I think you will find it in there.

Q. Will you point it out then, if you think I will find it there.

A. I haven't the books here.

Q. The books of the receivership are here. Are you familiar with them?     A. Yes.

Q. Point out——

Mr. Whyte: Why don't you show him the items?

Mr. Enright: I am not that much of a book-keeper.

The Court: Mr. Enright says it isn't there, as I understand. I understand you to say you can't find it.

Mr. Enright: Not in the accounting I can't find it. If I can trace some refund——

The Court: Let's have him do it during the recess and conserve the court time.

Mr. Enright: Yes, I think that is more expeditious.

Q. (By Mr. Enright): Now, again directing your attention to Schedule B, pages 3 and 4 thereof, you did pay out the salaries to Mr. Harrison, as reflected upon the schedule?

Can you find those items, Mr. Hallberg?

(Testimony of Roy E. Hallberg.)

A. I believe I have them here, yes.

Q. Will you tell us what the amounts are?

A. The one I have here——

Q. What column? A. Sir?

Mr. Enright: Will you read the question, Miss Reporter?

(The record was read.)

Q. (By Mr. Enright): If you do not understand the accounting, I would appreciate your stating so, the mechanics of it; I would appreciate your stating so.

And I would further appreciate it if counsel would not aid the witness in ascertaining the amounts.

A. If you will look on the large page under the column "Office" you see an amount of \$450.00, the first item.

Q. Yes. Any other item?

A. It will be included in your disbursements for [205] February, under operating \$600.00, in there.

Q. How about December?

A. You will find it under "Office"——

Q. What page?

A. Two pages prior to the large one. You will find an item there of \$500.84, I believe you will find covers——

Mr. Whyte: May the record show that the witness is now referring to the third page of Schedule B?

Q. (By Mr. Enright): Will we likewise find the amount you paid Miss Findeisen for her services? A. Yes, you will.

(Testimony of Roy E. Hallberg.)

Q. Now, Mr. Hallberg, when you were appointed Receiver and within the two or three days after your appointment, and I assume December 2nd as your date of appointment,—we had better go back to December 1st—that was the day, I think you went around to some of the apartment houses.

During the first three days, did you introduce anyone to the managers as being your agent?

A. Yes.

Q. What did you tell the managers?

A. I introduced Miss Cosgrove.

Q. What did you tell the managers?

A. I told them she was going to act for me.

Q. In the——

A. In the management, yes. And anything she wanted [206] would be under my instructions, and they were to follow it.

Q. You did not later inform the managers that Miss Cosgrove was your wife, did you?

A. I didn't see it was necessary, for the simple reason that she preferred acting as Miss Cosgrove.

Q. You did not inform Judge Tolin you intended to delegate your operation of these five apartment houses to your wife, did you?

A. I did not inform him that I was going to hire any assistance, or, in fact, we had no conversation about the assistance I was going to require.

Q. You did intend to do this very thing when you were appointed Receiver, didn't you?

A. If it required it.

Q. You did, in fact, perform your activities as

(Testimony of Roy E. Hallberg.)

the Receiver by receiving reports from Miss Cosgrove?

Mr. Whyte: Oh, objected to as going far beyond the evidence adduced here. The witness has testified as to what he did.

His own personal activities, as to a Receiver, went far beyond receiving reports from Miss Cosgrove or Mrs. Hallberg. It assumes facts completely contrary to the facts.

The Court: Overruled.

Q. (By Mr. Enright): You did, in fact, Mr. Hallberg, especially—or, commencing December 7, 1953, rely upon Miss [207] Cosgrove in performing activities involved in the management of these five apartment houses?

A. I didn't hear everything you said there.

Mr. Enright: Read the question.

(The question was read.)

The Witness: I relied on some of her activity, that is true.

Q. (By Mr. Enright): Actually, the physical method of operation was that commencing December 7th and all through February 28th, and you would make trips up to Los Angeles on the weekends or come up Friday night after completing your work for the County of Orange, isn't that right?

A. I came up during the week. I came up Friday, it is true. I was there Saturday. I was even there on Sunday.

Q. Friday evening, Saturday and Sunday?



(Testimony of Roy E. Hallberg.)

A. During the week I was there on various occasions.

Q. During the week you would receive reports after you got home from Miss Cosgrove, as to the occurrences during the day?

A. Sometimes I did.

Q. Now, Exhibit B, that is your little diary, is that right? It records the principal problems you had each day as they arose during your activities as Receiver in this matter?

A. I think I explained that book to you at the time [208] I presented it to you, that it is a composite of the various activities up to a certain point.

They do not include everything, every little conversation, every person we talked to, but as an overall picture of various things we considered important enough to write down.

Q. The important and principal problems you had are recorded here, are they not?

A. For the most part.

Q. Which ones are not then?

A. I can't tell you now.

Q. Did you consider the refrigeration problem at the Western Arms an important problem?

A. I did, and I was there.

Q. When were you there?

A. I was there.

Q. With reference to the breakdown of the refrigeration system?

A. I got in there one afternoon around 4:00 o'clock.

(Testimony of Roy E. Hallberg.)

Q. And was that the day of the breakdown?

A. No, it was two days following, and it was running perfectly.

Q. In fact, it was two days later, after the breakdown, that you got there, wasn't it?

A. After all, it was a question of having that machine in operation—— [209]

The Court: Mr. Hallberg, the question should be answered yes or no. Then if it is necessary to explain it, you may do so.

The Witness: Will you state the question again?

Mr. Enright: Read it, please, Miss Reporter.

(The question was read.)

The Witness: Yes.

Mr. Whyte: You wish to explain your answer, Mr. Hallberg?

The Witness: I do. We had the original contractor, the original refrigeration contractor up at the office. I talked with him and I was a little concerned about his knowledge of refrigeration. That happened to be the California Refrigeration Company.

I also talked with the Normandie Refrigeration Company, who had apparently much more experience. And the words were given to Mr.—given to the Normandie Refrigeration to finish up the job and save some upon it.

Q. Are you through with your explanation?

A. Yes.

The Court: Are you able to recall how much time you gave Orange County during the two days

(Testimony of Roy E. Hallberg.)

that elapsed, from the time the emergency arose and the time you arrived there?

The Witness: It is pretty hard at this time to state. I do know I went in there and as far as the actual work on the unit was concerned, the men were more capable than I was [210] of doing the required amount of repair; my being there wouldn't have helped any.

The Court: How long after the emergency first arose before you talked to any refrigeration men about it?

The Witness: I talked to them on the telephone the next day.

The Court: Did the emergency arise in the nighttime?

The Witness: It did.

The Court: What time of day did you hear about it?

The Witness: I heard about it late that afternoon. The managers had certain contractors they were at liberty to call for emergency work. And on refrigeration they were to call the California Refrigeration Company.

When they got on the job they worked during the day and had repeated phone calls with their office, which was overheard by the manager and proved to the manager the men didn't know what they were doing on the job. And when I got that information I certainly wanted to get somebody else on the job.

Mr. Enright: May I move to strike the witness'

(Testimony of Roy E. Hallberg.)

answer, that the men didn't know what they were doing?

The Court: No. He said it proved to the mind of the manager that the men didn't.

Mr. Enright: The manager, I see.

The Court: He is talking about the state of mind of the [211] manager as she communicated it to him, as I understand it.

Is that right?

The Witness: Yes.

The Court: Then you first came into the situation after the resident manager gave up, is that right?

The Witness: That is right.

The Court: How long after you got that word from the resident manager before you did anything?

The Witness: She had contacted another refrigeration company, knowing it was quite vital to get immediate service on the refrigeration. And I think actually her calling as soon as she did for another refrigeration company was quite in line with her duties, because of the fact that she had a company already on file that she could call for emergency. And the man who she did call at one time worked for the same company.

The Court: Well, the question, though, was how long after you were told that she was dissatisfied with her progress with the company or companies she called did you step into the picture?

The Witness: The following morning.

(Testimony of Roy E. Hallberg.)

The Court: Before noon?

The Witness: Yes.

The Court: Before 10:00 o'clock?

The Witness: At this moment I would say before noon. [212]

The Court: 12:00 o'clock. Mr. Enright, I don't want to shortchange you, but we had better take our recess. We can convene at 1:30, if you like.

Mr. Enright: Whatever is the convenience of the court.

The Court: 1:30.

(Whereupon, recess was taken at 12:00 o'clock noon, Friday, May 14, 1954, to 1:30 o'clock p.m. of the same day.) [213]

### ROY E. HALLBERG

called as a witness on his own behalf, having been previously duly sworn, resumed the stand, and testified further as follows:

#### Cross Examination—(Continued)

Q. (By Mr. Enright): Mr. Hallberg, before the recess we were discussing the subject matter of the refrigeration failure at the Western Arms.

Mr. Enright: May I inquire if the court has completed his questions?

The Court: Yes.

Q. (By Mr. Enright): Now, the first you heard about the refrigeration problem at the Western Arms is shown in your memoranda that you kept



(Testimony of Roy E. Hallberg.)

or made up in the evenings at your home, is that right? A. May I have my——

Mr. Whyte: May the witness refresh his recollection?

Mr. Enright: If I may step up next to the witness, I will use my copy.

The Court: Surely.

Q. (By Mr. Enright): Now, directing your attention to your notations made for Friday, February 19, 1954, you made the entry, "to W. A. re: refrigeration. John Dougherty", is [214] that correct? You made that entry on that date?

A. I made that entry, yes.

Q. Now, the only other entry you made in your diary concerning this refrigeration problem was one made on February 22nd, where you entered, "Switched to Normandie Refrigeration at W. A.", meaning Western Arms?

A. That is correct, yes.

Q. Those are the only two entries you made?

A. That is correct.

Q. In your diary?

A. That is correct.

Mr. Whyte: Did you check that, Mr. Hallberg?

The Witness: Yes.

Mr. Whyte: All those intervening days?

Mr. Enright: I will represent to the court I have checked them and I found no other entries on the diary. It is the best evidence. If you want to take the time and cross examine on redirect, go ahead.

(Testimony of Roy E. Hallberg.)

The Witness: As far as I recall, those are the only entries.

Q. (By Mr. Enright): February 22nd was a holiday, was it not, so far as the County of Orange was concerned? A. Yes.

Q. Now, where were you during the period from February 16th to Friday, the 19th, if you know?

A. It is pretty hard to tell you now.

Q. Were you available at your home phone number at Corona del Mar? A. Oh, yes.

Q. You were available there?

A. Not during the day, probably, but at night I was, definitely.

Q. Did your agent, Mrs. Hallberg, report to you on the 16th, 17th or 18th that the refrigeration had had a failure in the Western Arms Apartments?

A. At this time, no, because the refrigeration service company would have automatically been called.

Q. Then the refrigeration of these 406 apartments in five apartment houses is a matter of automatic attention on the part of the managers, is that it, so far as you as Receiver were concerned?

A. I don't believe you mean exactly as you stated it there.

Q. You did not attend to this refrigeration problem in the Western Arms Apartments during the period February 16th to February 19th?

A. I personally did not do the work.

Q. No. You were not available by phone and had

(Testimony of Roy E. Hallberg.)

no knowledge of any problem on the refrigeration during that period of time, February 16th to the 19th, in the evening, [216] Friday evening, February 19th? A. I was available.

Q. My question was, was your knowledge as Receiver. You didn't even know there was such a problem, did you, during that period?

A. I do not believe it had been reported. However, I cannot recall exactly because there is no mention in my diary here.

Q. And now, you stated before recess that you did come to Los Angeles during the period December 7th to February 28th on workdays, Monday through Friday?

A. I was through at times.

Q. The only times you did come to Los Angeles during the work hours of the day, 8:00 in the morning to 5:00 in the evening, was on the one day that your petition for authority to renovate apartments was heard in this court in an afternoon in December, isn't that correct?

A. That is not correct.

Q. The only other time you came to Los Angeles was the time you appeared over at the City Prosecutor's Office of the City of Los Angeles at about 4:00 o'clock in the afternoon on the smog control complaint? A. No.

Q. What other times did you come to Los Angeles? A. I stated previously. [217]

Q. During a work week. I know about your weekends.

(Testimony of Roy E. Hallberg.)

A. I stated previously that there were times I came in during the week.

Q. On Friday afternoon late?

A. During the week; not on Friday.

Q. Show me in your notes here any entry that you have made as to a trip you made to town here during the day——

A. I have no entries there at all showing I made any trips or that I didn't make any trips.

Q. In all the entries in these notes here usually the words "made the rounds" merely means that Mrs. Hallberg went to the apartments and picked up the monies, isn't that right?

A. Not necessarily.

The Court: Would it ever mean that?

The Witness: Occasionally it would.

The Court: What else would it mean?

The Witness: It would mean that I probably went in and made a fast turn of the apartments.

Q. (By Mr. Enright): Did you see the managers when you did that?

A. Occasionally I did; quite often I didn't.

Q. Wouldn't you want to know from your managers what the problems were and how they were getting along with these 60 and 80 and 50-unit apartments? [218]

A. If there were any problems I am quite sure the managers would have been in touch with the office.

Q. Really, Mr. Hallberg, what you did do is that you delegated to your wife the operation of these

(Testimony of Roy E. Hallberg.)

five apartment houses during the work week, isn't that correct?      A. No.

Q. I direct your attention to your deposition, page 89, line 25, to page 90, line 19. When you have completed reading it, please advise me.

A. I think the——

Mr. Whyte: There is no question before the house, Mr. Hallberg.

Q. (By Mr. Enright): Did you on April 22, 1954, testify as follows concerning this subject matter:

“Q. Well, generally, didn't you do your checking on the operation of these apartments on the weekends, Mr. Hallberg?

“A. I did this, done that.”

A. That isn't what I said.

Q. (Continuing reading:)

“Q. I mean, that was the rule, wasn't it?

“A. Not necessarily.

“Q. You'd come in on weekends, Saturdays and Sundays?

“A. Not necessarily. I came in during the [219] week some evenings.”

Mr. Whyte: Mr. Enright, may I interrupt to ask whether you are reading from the original corrected deposition?

Mr. Enright: I am reading from the deposition as handed to me by the reporter.

Mr. Whyte: If you will be kind enough to read from the original, which has been corrected, I think you will get a more accurate picture.



(Testimony of Roy E. Hallberg.)

Mr. Enright: I will read the portion as given at the deposition and then read it as he corrected it, so the record will be complete.

“Q. You’d come in on weekends, Saturdays and Sundays?

“A. Not necessarily. I came in during the week some evenings.

“Q. Some evenings during the week?

“A. Yes.

“Q. But not during the daytime very frequently?

“A. I have—was in during the day at times.

“Q. Approximately how many times during the day? “A. I don’t recall now.

“Q. Now, you were busy during the day working for the County of Orange, weren’t you; that is, the week days, Monday through Saturday, or Friday night?

“A. Friday nights I made it a point to get in [220] there and stayed around all day Saturday, and I was there on occasion on Sunday.”

Mr. Whyte: May the record show what Mr. Enright has read is the deposition copy received by him from the reporter and not corrected by the witness on the original?

Mr. Enright: I will complete it, sir.

Q. (By Mr. Enright): Now, Mr. Hallberg, do you desire to correct your deposition from the manner in which the court reporter reported your deposition, in the manner in which you have corrected it here in the original? A. Yes.

(Testimony of Roy E. Hallberg.)

Q. All right. Then you did correct page 90, lines 5 to 7, to read as follows:

“Q. You’d come in on weekends, Saturdays and Sundays?

“A. Not necessarily. I came in during the week some evenings,”

and you wish to add on to that “as well as days”, is that correct? A. That is correct.

Q. Now, what other days, other than the day that you appeared over at the City Prosecutor’s office on the smog control complaint and the day you appeared before his Honor of this court on your petition for authority to renovate those apartments, what other days did you come in? [221]

A. I believe I stated at the time that I couldn’t tell you the exact days, but there were many days that I came in.

Q. Now, you referred in your direct testimony to negotiating some insurance. Didn’t Mrs. Hallberg attend to most of those negotiations?

A. I was in the office on two occasions. He met me at my office on one occasion. Mrs. Hallberg also contacted Mr. Dulley, the broker.

Q. You met Mr. Dulley twice, and he was in your office once? A. Yes.

Mr. Harrison worked from Monday through Friday as an employee of yours, didn’t he?

A. That is correct.

Q. You would leave your instructions to him in writing on many occasions?

A. If he wasn’t around, yes.

(Testimony of Roy E. Hallberg.)

Q. Is it your testimony you set up a new system of keeping the records of the administration of these properties? A. I did.

Q. And you gave your directions to Mr. Harrison in writing, did you?

A. I gave some instructions to him, yes, not all.

Mr. Enright: May I have these four sheets of paper marked for identification next in order?

The Clerk: Defendants' C for identification.

(The documents referred to were marked Defendants' Exhibit C for identification.)

Q. (By Mr. Enright): Mr. Hallberg, I present to you Exhibit C for identification and then ask you to examine all three of these sheets of paper and state whether or not they are in your handwriting?

Mr. Whyte: Can you answer that question, Mr. Hallberg?

The Witness: What was the question?

(The question was read.)

The Witness: They are in my handwriting, with the exception——

Q. (By Mr. Enright): Yes, go ahead and state it.

A. This, I don't know (indicating); that is shorthand. I don't know what that is.

Q. The shorthand writing appearing on one of these sheets is not your shorthand writing, is that right, Mr. Hallberg? A. That is correct.

Mr. Whyte: May the record show that that is sheet 3 of Exhibit C for identification.

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Enright): Now, the sheet 3 for identification constitutes your instructions to Mr. Harrison to prepare the new set of books?

A. No, those were not instructions to prepare a set [223] of books. Those were instructions as to what I wanted to get and we were going to sit down and work it out, because a bookkeeper who has been accustomed to one method sometimes finds it a little difficult to jump to a completely different set of books.

Q. Do you base your answer on how bookkeepers operate on your training at Northwestern, back in the '20's, and your approximate one year working with the books pertaining to a bondholder's taking possession of property in Chicago in 1931?

A. As a matter of fact, information you gather on methods is not lost.

Q. You didn't lose your knowledge attained back in the '20's at Northwestern?

A. No, sir. I still think——

Q. I appreciate you do.

The Court: Have you ever done anything with bookkeeping since then?

The Witness: I have done it quite often for myself or Morgan Construction Tooth Company, and even I was an auditor appraising—when I was an auditor appraising, I worked with the books.

Q. (By Mr. Enright): Morgan Construction Tooth, that was during that period of June of '51 to Christmas of 1951?

A. Approximately so, yes.



(Testimony of Roy E. Hallberg.)

Q. At that time you went into and examined the Morgan [224] Construction Tooth Company's books, did you not, in May and June of 1951?

A. No.

Q. You did not?

A. No, because there were no books.

Q. There were no books? A. No.

Q. Do I understand you correctly to state that Morgan Construction Tooth Company, a corporation, had no books during the months of May and June of 1951?

A. You recall I testified that a public accountant was brought in there to bring those records up to date.

Q. Well, what records was he bringing up to date? Were there books he was bringing up to date?

A. The books and the records, yes.

Q. And you with the public accountant brought them up to date, did you?

A. I wasn't concerned with the past.

Q. You were not?

A. Not at that point. I was keeping the records up to date and making the entries, the current entries.

Q. After you went with Morgan Construction Tooth in June, is that right, May or June,—

A. June, yes.

Q. —and you directed Mrs. Hostetter to keep the [225] books up to date—

A. No, I did that myself.

Q. You personally did it? A. Yes.



(Testimony of Roy E. Hallberg.)

Q. You did that each month during June through December of 1951? A. Yes.

Q. So you did have six months there of posting of books involving the sale of a tooth to be set up on the end of a boom shovel or earth moving equipment, is that it?

A. It was not quite technically correct, but——

Q. Very close, though, isn't it? Isn't that right?

A. It is close enough.

Q. So these are the type of instructions you gave or prepared over the weekends when you were in Los Angeles and left for Mr. Harrison your——

A. It doesn't necessarily mean it was prepared over the weekend; they are not dated.

Q. I know that. But they are the type of instructions you left for Mr. Harrison?

A. That was for, information, as I explained before, so that we could get books together and that he would be able to work with.

Q. You did not prepare a report as to a Receiver within the 30 days after your appointment, as provided by the [226] rules of this court?

Mr. Whyte: Objected to as calling for a legal conclusion from a lay witness.

Q. (By Mr. Enright): Did you prepare a report within the 30 days commencing December 2, 1953?

Mr. Whyte: Objected to as immaterial. Same objection as before, it calls for a conclusion——

The Court: Sustained.

Mr. Whyte: I didn't catch that.

(Testimony of Roy E. Hallberg.)

The Court: Sustained.

Mr. Enright: I wish to prove through this witness, and make offer of proof that he failed to fulfill his duties as Receiver in preparing a report as required by the rules of this court, which are that the Receiver submit his report within 30 days after his appointment.

The Court: All right. That is what you want to do. Just ask him that.

We take notice of what is in our records and what is not there.

Mr. Enright: All right.

Q. (By Mr. Enright): Then I will ask you: Did you prepare a report within the 30 days after you were appointed Receiver?

A. We started to prepare a report and it wasn't necessary. [227]

Mr. Enright: Now, I move to strike "it wasn't necessary."

The Court: That part of the answer will go out.

Q. (By Mr. Enright): You started to prepare a report, didn't you, Mr. Hallberg, and you found your records were not complete, isn't that true?

A. No.

Q. You had Mr. Whyte come out and instructed Mr. Harrison to get the report prepared, also?

A. We had to find out what information was necessary.

Q. And the court rule was read to you and Mr. Harrison, wasn't it?

A. As far as I know, it was.

(Testimony of Roy E. Hallberg.)

Q. Yes. And approximately a week or so later then an order was made by this court extending the time within which to make the report, isn't that right?      A. That is correct.

Q. Did you represent to Judge Tolin, before your appointment on December 2, 1953, that you had for some years been associated with property management operation in Chicago? I call your attention to the word "years".

A. I believe I mentioned the fact that I had had experience that extended over a period of time in Chicago.

Q. You did make the representation then to Judge Tolin that you had for years had this experience, as I just stated [228] it, before you were appointed?

I would appreciate a yes or no answer, and then you may explain it in any manner you want to.

Mr. Whyte: I am going to request the transcript be shown to the witness. The transcript is the best evidence of what he said to Judge Tolin. I request he be shown the transcript.

The Court: Mr. Whyte, he is inquiring as to what he told me before there ever was a transcript. At least, I am assuming he is. If I hadn't had some knowledge of your client he never would have gotten in here to make a transcript, so the objection is overruled.

Mr. Enright: May we have the question read?

(The question was read.)

Mr. Whyte: I am going to request, also, that he

(Testimony of Roy E. Hallberg.)

be given the approximate time, place, persons present, with respect to this conversation.

If he wants to lay a foundation, let him do it properly here, so that the witness is acquainted with the conversation he has in mind.

The Court: Of course, we are not seeking to employ a man now. We are undertaking to fix compensation after he has completed his services. I don't think that is worth laboring too much, what the circumstances were in his getting the employment. [229]

Mr. Whyte: Then I will add the objection of immateriality, your Honor.

The Court: No, it is material and it is proper. It should be considered here.

But we have taken a tremendous lot of time with it. I don't think it is worth a whole lot of time.

The Witness: The question, you are asking me a question that is awfully hard to recall. The fact that I handled properties extending over one, possible two different years, and the term "years" is rather a vague term——

Q. (By Mr. Enright): Would you please answer the question, after you are through with your explanation, whether it is yes or no, your answer?

A. Well, the question, you can't answer it yes or no.

The Court: I gather from the colloquy that has gone on that he can't answer it at all. That is, he says, "I just don't know whether I have said it was three years or not."



(Testimony of Roy E. Hallberg.)

Mr. Enright: My inquiry is what representations were made to this court before his appointment. The doctrine of unclean hands, that has application to every proceeding in equity. I would desire to lay this foundation, that this man's hands are not clean.

I will proceed to another question.

Q. (By Mr. Enright): Did you represent to Judge Tolin, before your appointment as a Receiver, that you had been [230] engaged in managing property for elderly relatives in this area?

A. I don't know that I made any such statement.

Q. Would you say that you did not make such a representation to Judge Tolin?

A. I wasn't managing properties for a relative here.

Q. I appreciate that, sir. But I want to know what you represented to this court, and I would like to have your answer.

A. I think the answer has already been given you in the deposition.

Q. What did you tell Judge Tolin concerning managing property for elderly relatives?

A. I don't know that I told him anything about elderly relatives.

Mr. Enright: You see, your Honor, I am in this predicament: This is what I anticipated would occur when I filed a petition concerning your Honor's qualifications.

The Court: I didn't treat that as a petition. It was kind of a memorandum. It wasn't a moving paper.



(Testimony of Roy E. Hallberg.)

I don't know if you know how Receivers are appointed in this court generally, Mr. Enright.

We had a case the other day and one of the other judges said, when he happened to be at a place where some of the judges were together, he said, "Do any of you fellows know [231] anyone that would be good at running a certain kind of business?" And he named it.

He said, "I thought of asking so-and-so," and he named a well-known attorney. He said, "I knew he operated a business of that kind. I telephoned him and he isn't available."

So we get suggestions from things that we have learned, as a matter of common community knowledge about people, and then we follow them up; we make further inquiry.

That further inquiry was made here on the record. My impression at the time that I asked Mr. Hallberg to come in was that he had been operating an apartment house in Pasadena or South Pasadena for an elderly relative.

It turns out, on the hearing now, he owned the apartment house and the elderly relative was probably working for him.

Mr. Enright: I appreciate that, but——

The Court: I don't see it makes much difference. The thing is that he had had acquaintance to that extent with that apartment house.

Mr. Enright: Without reply at this time, your Honor, to the proposition that is before you, I am here endeavoring at this moment to develop the

(Testimony of Roy E. Hallberg.)

record that this witness, this Receiver, did make misrepresentations to the court, and the court relied upon them and made the appointment. That is the predicament I am in.

I will apparently have to call the court as a witness as [232] to what he did or didn't say to you.

The Court: You can't call the court on that subject. We are not going into it any further. It is closed.

Mr. Enright: I will desire to complete this point here:

Q. (By Mr. Enright): Did you represent to Judge Tolin that you had managed apartments for elderly relatives who have considerable apartment property in southern California?

Mr. Whyte: Objected to as immaterial; already asked and answered.

The Court: Sustained on the ground it has been asked and answered.

Mr. Enright: I will point out the amount of properties involved in this last question, that it was not involved in the previous question.

Q. (By Mr. Enright): Did you represent to the court before your appointment, that your main vocation for some years, was the management of real property?

A. I believe I mentioned to the court that I had handled and managed properties.

Mr. Enright: I desire to inquire, your Honor, if the court's last statement concerning this subject matter was to the effect that this subject matter

(Testimony of Roy E. Hallberg.)

is closed, and I take it that is a direction to me not to pursue this subject matter.

The Court: It is a direction to you to not go further into what led me to call Mr. Hallberg in here and present [233] himself for questioning at the time that he was appointed.

These Receivers do not in this court,—they might in the bankruptcy side, but in this court generally equity receivers are not people that come around making representations and asking for these appointments. They are people whom the judges seek out, and it is looked upon with not a very kindly eye, when we seek out people whom we consider qualified, to come in here and try the judge and that receiver on the basis of bad faith in the representations.

Mr. Enright: I appreciate your Honor's statement, but I desire to develop that after this man was sought out by your Honor he then made the representations which are not true and the representations resulted——

The Court: You may question him all you want about the representations he made on the record when we called him in here for further examination by counsel and inquiry by the court.

I say, all you want to. I hope you will not take all afternoon at it.

Mr. Enright: I don't think I have overly wasted time in the proceeding before your Honor.

The Court: I think, Mr. Enright, you never feel

(Testimony of Roy E. Hallberg.)

you are wasting time. You are one of the most diligent men whom I know.

Mr. Enright: Thank you, your Honor. [234]

Q. (By Mr. Enright): Did you represent to Judge Tolin and the parties assembled in the chambers of Judge Tolin on November 30, 1953, your main vocation for some years was in the management of real property?

Mr. Whyte: Before you answer, Mr. Hallberg, the counsel is questioning you with reference to a written document, and I am going to request that the writing be placed before you.

The Court: If you are questioning him with respect to things set on the record, he should be shown the record.

Q. (By Mr. Enright): I direct your attention to the transcript of November 30, 1953, page 10, lines 5 and 6, reading as follows:

“\* \* \* that your main vocation for some years was in the management of real properties, \* \* \*”

A. That is correct. During the years that I had those properties.

Q. And the years you are referring to now is the year 1931 in Chicago?

A. And '32. It will extend over into '32.

Q. Your acquiring a residence on Glen Summer Road in 1947 and living there until 1952, that is your residence, two residences on that street?

A. I had two residences, yes.

Q. You lived there during that period?

A. Yes. [235]

(Testimony of Roy E. Hallberg.)

Q. And one apartment house here on Fair Oaks?

A. One on Fair Oaks, and——

Q. The four-family flat on El Molino?

A. That is a four-apartment building on El Molino, yes.

Q. And two residences down in Orange County?

A. One a residence and one a triplex.

Q. And that was your main vocation for some years, as of November 30, 1953, is that right?

A. It is so stated.

Q. And did you represent at that time, as stated in lines 7, 8 and a portion of 9, on page 10, as follows:

“\* \* \* that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar **properties** owned by either you or your wife’s relatives”?

A. This part up here was what I was answering (indicating).

Q. Your whole answer, statement to the court, was as follows:—so we will make it clear, I will read all the representation, commencing at line 3—

“Now, they haven’t announced any objection, but they don’t know you. I have explained to them——”

Mr. Whyte: May the record show this is the court’s statements which are being read into the record?

The Court: Yes. [236]

Mr. Whyte: The impression has been created



(Testimony of Roy E. Hallberg.)

these are Mr. Hallberg's statements. These are the court's statements. Go ahead, Mr. Enright.

Mr. Enright: Thank you. Starting over, Miss Reporter, at line 3:

"Now, they haven't announced any objection, but they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some years was in the management of real properties, sometimes in connection with court receiverships, and that your experience in it locally has been in the management of your own real properties, which were of income nature, and of similar properties owned by either you or your wife's relatives."

Q. (By Mr. Enright): Mr. Hallberg, is that correct?

A. Ostensibly this is correct, with the exception of that last statement there. That was just a general statement. But the main fact was I had managed properties.

The Court: What he wants to know, Mr. Hallberg, is did the reporter get down correctly what went on?

The Witness: I don't believe the reporter did. However, at that time there was quite a general discussion and several people there, and the exact wording of that particular statement escapes me.

Q. (By Mr. Enright): Now, before you came into chambers on November 30, 1953, on page 4, line 16, the following representations were made as

(Testimony of Roy E. Hallberg.)

to what you had represented to this court, and I read:—

Mr. Whyte: Again may the record show this is the court's statement that is being read into the record.

Mr. Enright (Reading):

"Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types of corporations, and has been engaged in the management of property for elderly relatives who have considerable apartment property in southern California.

"I called him and found that he is available, and I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him. It was my intention——"

That is concerning another subject matter.

Q. (By Mr. Enright): That statement was likewise true?      A. Yes.

Mr. Enright: That is all. [238]

#### Redirect Examination

Q. (By Mr. Whyte): By the way, Mr. Hallberg, you replied to the question that statement was also true, and you said yes. By that you mean the reporter reported Judge Tolin's statement correctly?

A. As far as I know.

Mr. Enright: Well, pardon, your Honor. May I

(Testimony of Roy E. Hallberg.)

ask—I may find myself in a mental reservation or something—if he is just saying the reporter reported it correctly. I want to find out whether or not the statement is true, in addition to whether a reporter reported it correctly. I don't know just what this means here myself, but I want to leave no uncertainty in the record.

The statements were correct?

The Witness: Yes.

Mr. Enright: And they were the truth?

The Witness: As far as I can tell you now.

Q. (By Mr. Whyte): In the course of your duties as the Receiver of real and personal properties constituting the former Richman Trust, did you sign the checks which were issued by you as Receiver? A. I did.

Q. Will you tell us what you did in connection with the execution and issuance of each one of those checks? [239]

A. Those checks had been made out together with the supporting evidence in the way of bills and were checked against the amounts and I signed them.

Q. At the time you signed the check did you compare the amount on the check with the amount set forth in the bill? A. I did.

Q. Did you make any other check to determine or did you perform any other task in that connection to see whether the check correctly reflected the amount of the statement?

A. We usually had the—well, we did have the

(Testimony of Roy E. Hallberg.)

invoice checked before it was even presented, to see that the work had been finished.

Q. By whom was the invoice checked?

A. By Mrs. Hallberg and myself.

Q. You testified that you discussed matters during the evening with Mrs. Hallberg on frequent occasions. What sort of matters did you discuss with her at the end of the day?

A. Such problems as we both encountered during the day; work around the buildings. She encountered them and I encountered them. A lot of the decisions were made at night, based on the information I had.

Q. During those evening conferences, did you ever give her instructions with reference to the conduct of the succeeding day's work? [240]

A. I certainly did.

Q. You have testified concerning your ownership of a 16-unit apartment building on South Fair Oaks Avenue in South Pasadena. Please tell the court what, if anything, you did with regard to the actual operation of that building.

Mr. Enright: Objected to as there was no cross examination on what he actually did to establish the number of apartments; improper redirect examination.

The Court: Overruled.

The Witness: We had a lot of changes to make in the apartment. We wanted to upgrade it to quite an extent. We completely——

(Testimony of Roy E. Hallberg.)

Q. (By Mr. Whyte): By "we" whom do you mean?

A. Mrs. Hallberg and I completely redid color schemes throughout the building. The building was painted both inside and out. A lot of work I did myself.

We had contractors called in to do some of it. A roof was repaired. The garage doors were changed. The carpeting was completely pulled out and replaced by new carpeting to harmonize with the walls of the corridors, and new refrigeration units were put in. We took some double apartments there and made singles out of them.

Q. Did you do any of the painting work yourself, Mr. Hallberg? A. I did, yes. [241]

Q. Did you do any of the carpeting work yourself? A. I did some of that, yes.

Q. What other manual labor in the building did you do yourself?

A. Oh, I laid some tile, that is, floor tile.

Mr. Whyte: I think that will be sufficient.

The Court: I hope that someone is going to establish here whether there was a decline in income or an increase in income for the same properties during the period of the receivership and the immediately preceding period.

Mr. Enright: In that connection, your Honor, there are two aspects. We haven't seen the report, except in the three months. But I am quite sure that the witness, if he is experienced, will admit your winter months are different from summer



(Testimony of Roy E. Hallberg.)

months, at least in California, in Los Angeles. You can't compare those three months.

If he wants to compare those three months that he was in possession with three months, comparable three months of other years, that could be done. I believe it would carry some weight or have some effect that way.

The Court: That might be the proper comparison to make. But it would be of interest. Suppose it were a sharp decline? Everything goes along on 80 per cent occupancy level, and you put in a receiver and it cuts down to half that, that would be a drastic cut. [242]

While I am not going to give him credit for seasonal increase, if it turns out there was a seasonal increase, I would like to know how it turned out after he went in.

Mr. Enright: Yes. If that evidence goes in I don't know what it will be. I will say I would want an opportunity to bring in the comparable months of previous years.

The Court: It wouldn't be worth anything unless we had it.

Mr. Enright: My opinion, I am sure, is not controlling in this matter, but I think it should be to a comparable period.

Q. (By Mr. Whyte): Calling your attention to the period 1931 and 1932, in which you managed real properties in Chicago, how many buildings did you have under your control and direction at that time?

(Testimony of Roy E. Hallberg.)

A. Some forty or fifty buildings. I don't recall the exact number now.

Q. What services did you perform with reference to those buildings?

Mr. Enright: I object. No cross examination on that subject.

The Court: Sustained.

Q. (By Mr. Whyte): What was the largest building in the group that you managed in Chicago?

Mr. Enright: Objection, on the same ground, your Honor. [243]

The Court: Sustained.

Q. (By Mr. Whyte): During the course of your cross examination your attention was called to your report and petition for fees, and specifically to page 3, lines 17 to 22, in which you reported to this court:

"Petitioner's operations with reference to the assets and properties of the former Richman Trust, and the services which have been necessarily rendered and performed by him or his agents in carrying on the normal business and affairs of said former trust and matters incidental thereto, from and after December 1, 1953, to and including February 28, 1954, may be summarized as follows:"

You were asked who were included within the term "agents". And I believe you replied Mr. Harrison and Mrs. Hallberg. Is there anyone else who was included within the term "agents"?

A. The only one I could think of would be Miss

(Testimony of Roy E. Hallberg.)

Findeisen, who succeeded Mr. Harrison, and, of course, naturally, as agents I think that would include the managers of the various apartments.

Q. These petty cash funds that were kept at each individual apartment, please tell the court what function they performed. [244]

Mr. Enright: Objected to on the ground it is immaterial as to the function. The only question is were they under his control. The court order was to retain control.

The Court: I kind of would like to know what kind of funds they were. Let's just get the picture on it.

Mr. Enright: All right, your Honor.

The Witness: These funds were in the hands of the managers who were managing each one of these buildings. The funds were used to pay incidental bills as they accumulated, or out-of-pocket money, so that small items which they picked up at the stores and used in the building could be paid for.

It was also used for cashing checks. Some of the tenants in the buildings would bring in their checks and the managers would cash them from that petty cash fund.

Q. (By Mr. Whyte): You mentioned before that you considered those as part of the operating assets of the individual apartment houses.

A. I do.

Mr. Enright: To which objection is made.

Mr. Whyte: I hadn't finished my question.

(Testimony of Roy E. Hallberg.)

Mr. Enright: He started to answer at the same time.

Q. (By Mr. Whyte): You stated before that you considered those petty cash funds as being a part of the operating assets of the individual apartment houses. [245]

Did you so consider them for the reasons which you have stated, namely, they performed the functions you have mentioned?

Mr. Enright: To which objection is made as being incompetent, irrelevant and immaterial as to what he considered. The question is was the money under his control.

The Court: Sustained.

Mr. Whyte: I have no further redirect examination, your Honor.

The Court: Next witness.

(Witness excused.)

Mr. Whyte: Mrs. Hallberg, would you take the stand?

Mr. Enright: Your Honor, I have two witnesses under subpoena that will be short. I would like to be accommodated.

The Court: If you wish to take that out of order, we will take the two short witnesses.

Mr. Enright: Mrs. Kennedy.

#### MAUDE KENNEDY

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:



(Testimony of Maude Kennedy.)

The Clerk: Please be seated. Your full name, please?

The Witness: Maude Kennedy. [246]

Direct Examination

Q. (By Mr. Enright): Were you an employee of Roy E. Hallberg, Receiver, during the period about November 30th to and including February 28, 1954? A. I was.

Q. As an employee were you the manager of the Western Arms Apartments?

A. That is right.

Q. Would you state how many times you saw—first, how many hours a day were your services being rendered as manager of that apartment house? A. How many hours a day?

Q. Yes. Are you there 24 hours a day?

A. That is right.

Q. You have an assistant, is that it?

A. If I am not there the assistant was there.

Q. In the ordinary course of business all occurrences at the apartment of a business nature, so far as the owners are concerned, is reported to you?

A. That is right.

Q. Now, on how many different occasions during the period December 1, 1953, through February 28, a Sunday, 1954, did you see Mr. Hallberg?

A. Well, I saw Mr. Hallberg, it was either the morning [247] or the morning after he took over, and Mr. Richman brought him in and introduced him to me.



(Testimony of Maude Kennedy.)

Mr. Hallberg picked up the rents and Mr. Richman asked me to cooperate with Mr. Hallberg, and they left.

Then I don't know what day that was on, but I think it was on a Saturday evening or a Sunday evening following, I happened to go out and I met Mr. Hallberg and Miss Cosgrove in the lobby.

Mr. Hallberg introduced me to her and said that she was going to take over the interior decorating and I would deal with her.

I never saw Mr. Hallberg again until the 6th day of February, on a Saturday morning, and he came in and spent about an hour, and that is the only times I ever say Mr. Hallberg.

Q. Now, directing your attention to a refrigeration problem that occurred or arose at the Western Arms Apartment in February, I believe, of 1954. Did a problem arise concerning the refrigeration?

A. Yes. One of the apartments reported that the box was off. I called the company——

Q. I am concerned about the date, first, if you will pardon me.

A. It was either—it was on the 16th, and they came and turned the box off. I am sure that was the 16th. [248]

Q. Now, just a moment, Mrs. Kennedy, if you please. A. O.K.

Q. It is your best recollection that it was February 16, 1954?

A. As near as I know now.

(Testimony of Maude Kennedy.)

Q. Now, my inquiry is this: Did you attempt to get in touch with Mr. Hallberg?

A. I did.

Q. And for what period of time did you try to get in touch with Mr. Hallberg and/or Miss Cosgrove?

A. I started trying to get in touch with Mr. Hallberg on the afternoon of the 17th, 18th and 19th, and never was able to contact Mr. Hallberg.

About 5:00 or 5:30 on the evening of the 19th Miss Cosgrove called me and asked me if I had been trying to contact Mr. Hallberg, was something wrong with the refrigeration.

I said, yes, I was, but I said, "It is all taken care of. I had to go ahead and decide for myself."

Q. How did you try to contact Mr. Hallberg?

A. I tried to contact him through the office, and I called two different times out at his house, and I never was able to get him.

Q. By the "office" you mean the office set up over at the Oliver Cromwell?

A. Yes. [249]

Q. Oliver Cromwell Apartments.

A. That is right.

Q. Now, did you call Mr. Richman?

A. I certainly did on the morning of the 18th.

Q. Concerning this subject matter of the refrigeration?

A. Yes. By that time the whole units were off. There were about 21 people without refrigeration.

Q. What did he instruct you to do, if anything, or say?

(Testimony of Maude Kennedy.)

A. He said I should go ahead and see that it was done. I let the other people go and got Mr. Daugherty, John Daugherty of the Normandie Refrigeration.

Q. You let the other refrigeration company go and hired John Daugherty yourself?

A. That is right. And Mr. Hallberg called me; as near as I know it was on the morning of the 20th when he came in, and I explained to him what I did, and he said I did—that everything I did was perfectly all right.

Q. Now, when you used the words “came in”, was there a phone conversation or did he personally come over?

A. No, he did not come in the apartment. He called me on the phone.

Q. On the morning of the 20th?

A. Yes. I don't know where he was. I just judged he [250] was at the office.

Q. Directing to your attention to Miss Cosgrove's activities, did she attend to some painting at the Western Arms?      A. Yes, sir.

Q. Would you explain in what manner or how she attended to it?

A. Well, she just hired painters to come in and paint; most of it wasn't successful.

Mr. Whyte: I am going to ask the last remark of the witness be stricken as not responsive.

The Court: Denied. I would like to have an explanation, in the course of the testimony, wherein it was not successful.

(Testimony of Maude Kennedy.)

It seems if you are going to paint something you ordinarily succeed in taking the paint off. So if that means something to her, something more to her than it does to me, you can have her develop it.

Q. (By Mr. Enright): Mrs. Kennedy, how long have you been a manager of apartment houses?

A. Since 1924.

Q. In this community here?

A. That is right.

Q. Apartment houses similar to the Western Arms? A. A lot of it, yes.

Q. That course of years, have you as manager participated in the directing of the painting of apartments? [251] A. That is right.

Q. Will you explain what you mean by successful or unsuccessful painting by Miss Cosgrove over there in these apartments?

A. Miss Cosgrove insisted on them using a paint none of the painters wanted to use. I called it water paint. I don't know what the name of it was.

And she had a lot of trouble with the painters, because the painters refused to use it. She wanted them to put it on with a roller and they refused to do it.

So the painters would quit and they would have to go ahead and put this on, and it didn't cover, and then when you washed it, it washed off.

So that is what I meant about the paint.

Q. Yes. I will ask you specifically, can you remember were Apartments 304, 308, 119—

A. No, 304 and 119.

(Testimony of Maude Kennedy.)

Q. Now, did she bring out some paper drapes for you?

A. Yes, but I didn't use them. They were plastic something. I don't know, plastic tablecloths. I didn't use them.

Q. Did she pick up the money at the apartment, at the Western Arms Apartments?

A. Yes, she was the one that came in for it.

Q. Did she give you a receipt for the money she took? [252]

A. Well, sometimes she did and sometimes she didn't.

Q. You had a triplicate receipt for each item of rent collected, didn't you? A. Yes.

Q. Did she take those, one of the triplicates with her?

A. Well, sometimes she did and sometimes she forgot them.

Q. Whether she forgot them or not, she didn't take them with her sometimes?

A. That is right.

Q. Now, did you receive instructions from Miss Cosgrove as to what you should do in case you needed supplies?

A. No. I just went ahead and ordered my supplies like I had always done.

Q. Do you recollect a dispute with the painter concerning two-tone painting of one of the apartments?

A. I remember the difficulty in the Apartment 304. These painters, after they came up there Miss



(Testimony of Maude Kennedy.)

Cosgrove told them what kind of paint they had to use, and they said they had never used it, and if they did use it they wouldn't stand good for it.

Well, they did use it and it didn't cover, so I told Miss Cosgrove until it was repainted or something done to it I wouldn't show it.

So the apartment sat there for almost a month before [253] she got the painters back again to do the painting over, and then they came in and put some kind of shellac or something over it, and they got their money.

Q. I had in mind the problem, if there was one, about harmonizing a color scheme in the apartment at the Western Arms. I may be confused on that, a two-tone coloring.

A. Maybe you are thinking of 119. She said she was going to do a trick deal in there, yes. She put one end of it yellow and the other brown, and to date it has three coats and it still isn't covered.

Q. Now, as to carpeting, did Miss Cosgrove have some new carpeting, or did you have a dispute or trouble concerning some new carpeting?

A. No, there was never any new carpeting put down while Miss Cosgrove——

Q. I was referring to the lobby.

The Court: Which establishment is this?

The Witness: Western Arms. In the lobby?

Q. (By Mr. Enright): Yes. The old lobby carpets.

A. The old lobby carpets?

Q. Did she say she was going to put in new carpeting in the lobby?

(Testimony of Maude Kennedy.)

A. Yes, and I rented the apartment and I couldn't get in touch with Miss Cosgrove, so I found there was some old carpet that had been taken up out of the lobby in the trunk [254] room. So I had Mr. Waddell come over and we took the carpet out and he assured me I had enough there to cover this Apartment 301, which was a large apartment.

Mr. Whyte: I am going to move the last be stricken as hearsay, your Honor, what Mr. Waddell assured her.

The Witness: I talked to him.

The Court: I know, but he will have to come here to tell us. We can't take from you what he said. That is hearsay.

Q. (By Mr. Enright): You had a conversation with Mr. Waddell and then later you had him do some work on the carpeting? A. Yes.

Q. And you had it placed in the apartment?

A. That is right.

Q. So Miss Cosgrove didn't buy new carpeting for that area. A. That is right.

Mr. Enright: You may cross-examine.

#### Cross Examination

Q. (By Mr. Whyte): Mrs. Kennedy, I believe you stated you saw Mr. Hallberg on only three occasions, the first one on or about December 3rd, when Mr. Richman brought him in,—

A. Yes, sir, that is right.

Q. —and introduced him to you? [255]

A. That is right.

(Testimony of Maude Kennedy.)

Q. The second occasion was on Saturday or Sunday following, when you met Mr. and Mrs. Hallberg, is that right? A. In the lobby.

Q. And the third occasion on February 6th, on a Saturday morning? A. That is right.

Q. You are quite sure those are the only occasions upon which——

A. Those are the only occasions I ever remember seeing Mr. Hallberg.

Q. Do you recall that on December 2nd Mr. Hallberg and I came to the Western Arms Apartment building and requested that—either December 1st or December 2nd—spoke to you, met you and asked about your rents? Do you recall that, Mrs. Kennedy?

A. That was before Mr. Hallberg took over.

Q. Do you recall having seen——

A. I certainly——

Q. ——Mr. Hallberg on that occasion?

A. I was stating the times I had seen him after he took over.

Q. We all understand what your testimony was before, Mrs. Kennedy. A. All right. [256]

Q. There were occasions upon which you were not at the apartment building, is that not correct?

A. Why, certainly.

Q. You had an assistant manager?

A. That is right.

Q. Your assistant was in charge when you were gone? A. That is right.

Q. How frequently would that happen?

(Testimony of Maude Kennedy.)

A. Well, one day a week.

Q. Was it only one day a week or was it more often that you were away and left the apartment in charge of your assistant?

A. Every other Friday and every other Saturday. I didn't necessarily go away; I wasn't on duty.

Q. Did you have an apartment there?

A. Yes, right facing the lobby.

Q. Now, when you say every other Friday and every other Saturday, by that do you mean to say that you were never out of the apartment house on any other occasion except on every other Friday and every other Saturday?

A. I am trying to say that any time I was out the assistant was there. It never was alone.

Q. I am trying to find out how frequently you were out when the assistant was left alone in the apartment.

A. I told you—— [257]

The Court: What he wants to get is how much time you wouldn't be there and the assistant would. Would it happen that you would go out for an hour or two or would you go out for a morning or afternoon during the week, other than your day off?

The Witness: Very, very seldom.

The Court: Did you have a division of time you were on duty and time your assistant was on duty?

The Witness: That is right.

The Court: What was that division?

The Witness: Every other afternoon two hours off. When I was off the assistant would be on, and vice versa.



(Testimony of Maude Kennedy.)

The Court: Thank you.

Q. (By Mr. Whyte): I didn't quite catch your last answer, Mrs. Kennedy.

Mr. Whyte: Will you read the answer, please, Miss Reporter?

(The answer was read.)

Mr. Enright: You were off duty every other afternoon for two hours, and you were off duty every other Friday and Saturday, is that right, Mrs. Kennedy?

The Witness: I was off duty, yes.

Q. (By Mr. Whyte): Now, during those periods when you were off duty, did you ever leave the apartment building? A. Very seldom. [258]

Q. Where would you be, in your room?

A. That is right.

Q. So that if Mr. Hallberg or Mrs. Hallberg had come into the lobby of the apartment building at those times, when you were off duty every other day for two hours and every other Saturday and every other Friday, you wouldn't have seen them, would you?

A. No, but my assistant would.

Q. You mentioned the fact that you would order supplies. From what did you pay for those supplies, Mrs. Kennedy?

A. It was paid from the office. We dealt with the West Coast, and when I speak of supplies I mean soap and scouring powder for the maids.

Q. You say that was paid from the office?

A. That is right.



(Testimony of Maude Kennedy.)

Q. Did you have a petty cash fund at the office?

A. I certainly did.

Q. About how much did that fund consist of in your apartment? A. \$100.00.

Q. What other items did you take care of besides paying for supplies, such as soap, out of your petty cash fund?

A. We did not pay for soap out of our petty cash. The West Coast bill was taken care of from the office. [259]

Q. I misunderstood you then. Just tell me again what you used your petty cash fund to pay for.

A. We charge a dollar deposit on every key that is given the tenant. When they move out we return that. That goes in with the rents.

When they move out we refund them a dollar on each key, which is taken out of the petty cash.

Q. What else did you use petty cash for?

A. Any little bills that might come up that we had to pay petty cash. The assistant, the housekeeper, she did all the curtains, which was paid out of petty cash.

Q. Did you ever cash checks out of petty cash?

A. Never. No checks ever were cashed out of petty cash.

Q. Anything else that you ever did with petty cash, any other disbursements except—

A. Well, we paid, give the can man every time he comes a dollar.

Q. What man?

A. The can man, the man that collects the cans.

(Testimony of Maude Kennedy.)

Q. Thank you.

A. Because there is always stuff that we want to get out of the apartment house, and that way he will take anything we give him. So we pay him a dollar extra; that is taken out of petty cash. [260]

Q. Well, let's see whether we have them all. I am referring now to the things that you paid for out of petty cash. You made refunds on the keys?

A. That is right.

Q. You took care of little bills?

A. That is right. If someone came in, like we hired extra help from the employment agency, that was paid out of petty cash.

Q. All right. Extra help from the employment agency, that is another item?

A. That is right. When they came in for, Mr.—we had a man that came in there and washed the windows. I can't say his name right now. He washed kitchen walls down, and that was all paid out of petty cash.

Q. Washing windows and walls, paid from petty cash.

A. Or when a kitchen or bath had to be washed.

Q. And the can man was paid from petty cash?

A. That is right.

Q. And the curtains were paid for from petty cash?      A. That is right.

Q. Did you have any other fund of money on hand at the apartment, besides the petty cash?

A. No, we did not.

The Court: What would you do if a tenant there

(Testimony of Maude Kennedy.)

wanted to either get a check cashed or wanted to pay rent with a [261] check and get some change back, or something of that kind? Did you have situations of that sort?

The Witness: No, we didn't do that sort of thing at all. And the tenants understood they couldn't get checks cashed at the house.

The Court: You never did that kind of business?

The Witness: That is right.

Q. (By Mr. Whyte): I understood you to say that there was no other fund on hand at the apartment from which you could have taken care of key refunds, the little bills, the can man, the extra help for window washing or walls, the curtains and the othem items you mentioned payable out of petty cash, no other funds?

A. No; that is right.

Q. If you hadn't had that petty cash fund there would have been nothing from which you could have paid any of those items then?

Mr. Enright: Objected to on the ground it is incompetent, immaterial and irrelevant.

The Court: Sustained.

Mr. Whyte: Your Honor, it goes to show, of course, that when Mr. Hallberg did not take from the managers of these apartment houses their petty cash funds at the time he relinquished his receivership he did not do so for the very good reason these funds were part of the operating assets [262] of the apartment building.

(Testimony of Maude Kennedy.)

The Court: I don't mean by the ruling to exclude that theory. I just think the immediate question was not good.

Mr. Whyte: Very well, your Honor.

The Court: I am not accepting that theory for the moment, either. I am just not passing on it.

Q. (By Mr. Whyte): Mrs. Kennedy, did you ever have occasion to go out to the West Coast Specialty Company to pick up any supplies?

A. I certainly did.

Q. And when did you do that?

A. Whenever I needed something quickly and couldn't get a delivery on it, I often did it.

Q. You did that sometimes on days which were not your regular days off?

You say you had two hours off every other afternoon and every other Friday and every other Saturday you had off. Let's suppose that you had something you had to get from the West Coast Specialty Company on Monday afternoon, and you were in a hurry for it, would you go out to West Coast Specialty and get it?

Mr. Enright: Objected to on the ground the question is argumentative, compound, vague and indefinite, and uncertain, unintelligible.

The Court: Do you understand the question, Miss Witness? [263]

The Witness: No.

The Court: Ask it again.

Q. (By Mr. Whyte): Mrs. Kennedy, you have told us your days off were every other afternoon



(Testimony of Maude Kennedy.)

for two hours and every other Friday, every other Saturday.

Now, let's suppose on a Monday afternoon, one of the afternoons which was not your regular afternoon off, you found that you had to purchase something from the West Coast Specialty Company, and it was urgent, would you go and get it on occasions?

A. I would always get it on my time off. I had plenty of time off to get it.

Q. I am asking you whether or not you ever went to get things at the West Coast Specialty Company on days which were not your regular days off.

A. Not that I can remember of it.

Q. At the time Mr. Hallberg assumed his duties as Receiver, on or about December 1, 1953, can you recall how many vacancies there were at the Western Arms Apartments?

A. No, I cannot.

Q. Do you have any records with you that would show that?

A. I have no records with me.

Q. Do you have any records at the apartment—

A. I certainly do. [264]

Q. —that would show your vacancies?

A. They certainly should; my ledger should.

Q. I am going to request, Mrs. Kennedy, that you return and bring with you the records from your apartment building which will show the vacancies at the time Mr. Hallberg took over on the 1st of December, and I would like you to bring with you your records showing the vacancies all



(Testimony of Maude Kennedy.)

during the three-month period of December, January, and February, during which Mr. Hallberg was in charge of the apartments.

Will you do that, please?

Mr. Enright: Will you, Mr. Whyte, obtain permission for this manager, from counsel in the courtroom who is representing the owner. They have control of the records, Martin, Hahn & Camusi, attorneys for the plaintiff.

Mr. Powsner: I am not aware that the records are any place but the apartment house. I will obtain them, if I can. If they are in our possession we will have them.

Mr. Whyte: I would like to question Mrs. Kennedy with reference to them. Do you have any objection to her bringing them in?

Mr. Powsner: Not in the least.

Mr. Whyte: I will ask the court to instruct Mrs. Kennedy to return for further cross examination, bringing those records with her, of the vacancies during the three months when Mr. Hallberg was managing the apartment. [265]

Mr. Enright: I object to that on the ground it will neither tend to prove nor disprove any point involved here.

The Court: It might tend to prove the success or failure of Mr. Hallberg in keeping a place filled with tenants.

Mr. Enright: Well, this is the lady that managed it. She is the one that rented the apartments. The Receiver didn't do it. Perhaps she can answer.

(Testimony of Maude Kennedy.)

The Court: It is just something I think we would have to find as a result of a line of inquiry.

When can you conveniently follow out that request?

The Witness: Well, any time that you say.

The Court: Can you go out and get them and get back this afternoon?

Mr. Enright: I might state to the court this witness has been under subpoena. I understand she has a heart condition.

Is that right?

The Witness: Yes.

Mr. Enright: I didn't bring her in yesterday. I want the court to know it beforehand. I am sure she will be here. I had to delay her one day.

The Court: How about Monday at 11:00 o'clock?

The Witness: See, I am just giving up the managing of this building as of tomorrow night, and I had promised Mr. [266] Udall, the man that is overseer right now, to be there to talk to the new manager Monday morning.

The Court: How about Monday afternoon?

The Witness: That would be much better.

The Court: 2:00 o'clock Monday.

The Witness: That would be better.

The Court: Thank you.

Q. (By Mr. Whyte): Mrs. Kennedy, you said something about Apartment 119? A. Yes.

Q. Was that an apartment which was in rather poor condition, in your opinion?

A. Well, it needed painting.

(Testimony of Maude Kennedy.)

Q. Was it vacant?

A. It was vacant and I had it rented. It was vacated and I rented it.

Q. With reference to the painting, was it vacant before it was painted, immediately before it was painted?

A. Yes.

Q. When was it painted?

A. The people moved out. I had it rented, and I called Miss Cosgrove and told her I had to get the apartment painted immediately, and she said she would be out, and I said, "I can't wait."

Mr. Whyte: I am going to move the answer be stricken [267] as not responsive.

Mr. Enright: I submit the answer is responsive.

The Court: Motion denied. You may inquire further.

Q. (By Mr. Whyte): When was the apartment painted, Apartment 119?

A. It was started about a day or two days after it was vacated.

Q. Was it in December? Was it in January?

A. Now, I don't remember.

Q. It was sometime during Mr. Hallberg's tenure as Receiver that it was painted?

A. That is right.

Q. Was the apartment vacated immediately before it was painted?

A. I told you——

Q. It was?

A. A couple of days before.

Q. It was vacated?

A. It was vacated.

Q. Who instructed you to paint the apartment?

(Testimony of Maude Kennedy.)

A. Miss Cosgrove. She said she would be out and pick the colors.

Q. After the apartment was painted, how soon did you rent it?

A. I had it rented before it was painted. [268]

Q. Now, I have understood you to say, and you have an opportunity to correct your testimony if I am misinterpreting it—I don't want to put words in your mouth at all—I understood you to say the apartment was vacated immediately before it was painted. Is that correct or is it not?

A. I said it was vacated immediately before it was started to be painted.

Q. Well, the apartment was vacated. Was it vacant after it was vacated?

A. It must have been.

Mr. Enright: I object on the ground it calls for a conclusion of the witness; it is argumentative.

The Court: It would necessarily be for a short time. Once you vacate something, there is nothing there.

The Witness: May I say something?

Q. (By Mr. Whyte): Please just answer the questions, Mrs. Kennedy. Was the apartment vacant after it was vacated? A. Yes.

Q. Then about two days later it was painted at Mrs. Hallberg's request, is that right?

A. At my request.

Mr. Whyte: Miss Reporter, I wonder if we can go back on the record. Will you go back five or six questions?

(Testimony of Maude Kennedy.)

(The record was read.)

Mr. Enright: I would like to have the previous questions [269] and the witness' previous answers, that she informed—these are not her words—Miss Cosgrove the apartment should be painted. Counsel's question now is a play upon words, as to who requested it.

(The record was read.)

The Court: I recall that. I don't think that it is a very subtle thing to observe; its rather open.

We will take our afternoon recess.

(Short recess taken.)

Q. (By Mr. Whyte): Referring to this Apartment 119, after the apartment was painted, somebody moved in, a tenant moved in, Mrs. Kennedy?

A. A tenant moved in. May I explain it?

Q. That is all. That is all, you have answered my question.

Has it been rented ever since then, so far as you know, that apartment? A. It has.

Q. Does it look pretty smart? A. No.

Q. But it has been rented continuously?

A. It was rented continuously before.

Q. It has been rented continuously since it was painted, is that correct?

A. That is right. [270]

Q. Did I understand you to testify in my cross examination it was vacated a few days before it was painted?

A. I didn't say a few days.

Q. What did you say?



(Testimony of Maude Kennedy.)

A. I said it was vacated and I called Miss Cosgrove and told her I had to have it painted immediately, because I had it rented.

Q. Now, how long did it remain vacant?

A. Just long enough to get it painted. I had the lady living in 204 waiting for 119 when it was finished.

Q. Was Apartment 119 painted with this water paint that you referred to? A. It was.

Q. That water paint is put out by the Glidden Company, is it?

A. I have no idea who it is put out by.

Q. Are you still the manager at the Western Arms, Mrs. Kennedy? A. I am.

Q. Now, with reference to this matter of refrigeration, you testified on your direct examination that you tried to get Mr. Hallberg on the 17th, the 18th, and the 19th of February, both at his office at the Oliver Cromwell and at his home without success?

A. That is right. There were two days all day long [271] that we tried to get in touch with him, and never succeeded.

Q. Is it two days or is it three days?

A. I was talking about when the refrigeration had started to go out. And that was on the 16th. Miss Cosgrove was in there either the 16th or 17th and saw the men working on it.

Q. The refrigeration went out on the 16th and Miss Cosgrove was in either the 16th or the 17th?

A. She came in to collect the money and walked

(Testimony of Maude Kennedy.)

out, and when I told her what had happened she said, "When I was in there I saw men working on the refrigeration machine." But I didn't know then that they were going to say that it was such a big job. And then——

Q. Let's try to get our facts straight here. The refrigeration went out on the 16th.

A. That is right; one box did.

Q. When did Mrs. Hallberg come in?

A. Well, I don't know whether she came in on the 16th or on the 17th. She came in to collect the money and went out through the basement.

Q. It was either the 16th or 17th?

A. That is right.

Q. Did she see the workmen working on the refrigeration?

A. She saw these people from the California, who were [272] servicing the house.

Q. Thank you. Now, you tell me that you attempted to reach Mr. Hallberg by telephone at his office or at his home?

A. That was either the 18th or 19th or the 17th and 18th, I am not sure which it was. But I think it was the 18th and 19th, the two days we tried after we found out that this was going to run into a lot of money.

Q. Consulting my calendar I find that the 18th and 19th were a Thursday and a Friday. Does that comport with your recollection, Mrs. Kennedy?

A. I just don't know.

Q. When you were attempting to reach Mr.

(Testimony of Maude Kennedy.)

Hallberg at his office, did you receive any reply to your telephone call?

A. Why, only Mr. Harrison; took all my messages.

Q. Was it Mr. Harrison who answered the telephone at the office on the 18th?

A. That is right.

Q. When you called on the 19th Mr. Harrison answered the telephone? A. That is right.

Q. How many occasions did you try, on how many occasions did you try to reach Mr. Hallberg at his home on either the 17th or 18th or the 18th and 19th?

A. I called him both days at his home, and there was [273] no answer.

Q. About what time did you call him?

A. That I would not know now. I would judge it was in the mornings.

Q. In the morning, you say?

A. I imagine it would be in the morning. I can't tell you for sure.

Q. You recollect whether you telephoned at his home in the evening?

A. I didn't try to get him in the evening. I left the messages at his office.

Q. What message did you leave with Mr. Harrison?

A. To get in touch with him some way, and Mr. Harrison said, "I don't know where he is. We can't find him."

(Testimony of Maude Kennedy.)

Mr. Whyte: I move that be stricken as hearsay, your Honor.

Mr. Enright: I object to it being stricken. It is responsive to the question.

The Witness: That was the only way I had of getting Mr. Hallberg, is through his office.

The Court: The answer is stricken, that portion of it. It is not responsive. The witness has made another answer, which I think is.

Mr. Whyte: No further cross examination.

#### Redirect Examination

Q. (By Mr. Enright): Mrs. Kennedy, how far is it from Western Arms to the West Coast Specialty?      A. About five blocks.

Q. Do you have an automobile?

A. Yes, I do.

Q. It is available to you there at the Western Arms?      A. Yes.

Q. Did your assistant manager ever report to you Mr. Hallberg had been at the building——

Mr. Whyte: Objected to as calling for hearsay.

Mr. Enright: It is a report in the due course of business in the operation of this property, one of the agents of the Receiver.

Q. (By Mr. Enright): Did your assistant manager ever report to you—please hold up your answer—that Mr. Hallberg had been by the Western Arms and at any time when you were absent on your two-hour relief in afternoons, as you ex-

(Testimony of Maude Kennedy.)

lained, or your Friday or Saturday that you had every other week——

Mr. Whyte: Objected to as hearsay, your Honor.

The Court: Overruled.

Do you understand the question?

The Witness: Do I answer? [275]

The Court: You can answer it yes or no. You can't tell the full conversation.

The Witness: Yes.

Q. (By Mr. Enright): And what was the report you received from the assistant manager?

Mr. Whyte: Again objected to as calling for evidence that is hearsay.

The Court: This is to show a report was received. I think this is one of the exceptions to the rule.

Mr. Enright: Very well, your Honor.

The Court: You may answer.

The Witness: One time.

Q. (By Mr. Enright): Go ahead and explain your answer.

A. One time when I came back, I think it was in the evening—I am not sure—Mr. Hallberg and Mr. Harrison were there and went through four or five apartments.

Q. That was the report?

A. That was the only time.

Mr. Enright: That was the report. It is a report of what took place.



(Testimony of Maude Kennedy.)

Q. (By Mr. Enright): That was the report you received?      A. That is right.

Q. Concerning this painting at 119 Apartment, did you participate in or hear a conversation between Miss Cosgrove and the painter? [276]

A. Well, I did on several occasions. But may I correct that? That was paint that was only put on the living room, because I had the bath, dressing room, and bedroom done before she came out there.

Q. Before Miss Cosgrove came out?

A. Yes, and it was done in the oil paints.

Q. Did you have any conversation with her concerning the painting of the living room?

A. I was not in there when she chose the paint. The painter came out and told me what she wanted him to use.

Q. But did you have a conversation with Miss Cosgrove before the painting of the living room of 119, in which she gave you some instructions concerning the living room?

A. She gave it to the painter, the instructions.

Q. I know she did, but did she tell you, if I may lead you, "Do not let the painter paint the living room," because she wanted to give him some particular instructions?

A. She said she was going to do a trick deal on it.

Q. On the living room?

A. On the living room.

Q. Were you present during a conversation be-

(Testimony of Maude Kennedy.)

tween the painter that did the trick deal in the living room of 119? A. Part of it.

Q. State what was said.

Mr. Whyte: Just a moment. [277]

Mr. Enright: This is a conversation between the painter and Miss Cosgrove.

Q. (By Mr. Enright): Is that right?

A. That is right.

Mr. Whyte: I am objecting, no proper foundation has been laid to show this woman was present at the conversation about which she is going to speak.

The Court: Is this the conversation which you heard?

The Witness: Yes.

The Court: Who else was there?

The Witness: The painter and the man that was helping him; he had a helper there.

The Court: And Miss Cosgrove?

The Witness: That is right.

The Court: You may relate the conversation.

The Witness: Well, she wanted him to put this water——

Q. (By Mr. Enright): Try and say, the best you can, what she said and what he said.

A. Miss Cosgrove wanted him to use this water paint, and he is an old Swedish fellow that learned his trade in Europe, so, naturally, he didn't want to use that. He said——

The Court: We can't have that.

The Witness: What do you want?

(Testimony of Maude Kennedy.)

The Court: You can tell what they said, but as to explanations of the character of the people and their backgrounds [278] in Europe and so on, we can't take that as part of the conversation.

The Witness: O.K.

Q. (By Mr. Enright): State as best you can what the painter said and Miss Cosgrove said.

A. So the painter said, all right, he would use it but it wouldn't cover.

So she went out and got him a card of the colors, and he went out and got brown for the walls and yellow for one other wall—I mean one end of it. She didn't like yellow.

Q. Now, what is the name of that painter?

A. Mr. Erickson, Carl Erickson.

Q. Was he still doing painting at the apartments after this event, painting 119?

A. He didn't do any more painting for Miss Cosgrove.

Q. Did the tenants state—as I understand, there was a tenant in 204 you had rented 119 to?

A. That is right. I put her in there waiting for 119.

Q. What did she say about the painting of 119 Apartment?

Mr. Whyte: I object to that as calling for hearsay evidence.

Mr. Enright: Report of the——

The Court: Do you think it comes into the exception?

Mr. Enright: It certainly does. I take it their

(Testimony of Maude Kennedy.)

position [279] is Miss Cosgrove has done an excellent job of decorating and painting here.

We have a report of the tenant of the apartment how they liked——

Mr. Whyte: I don't know what exception to the hearsay rule you are talking about. If you are talking about the reports kept in the regular course of business, then you haven't laid any sufficient foundation for showing reports were kept in the regular course of business by the manager of this apartment building, as to what the tenants said.

You will have to produce the books and identify this woman as the custodian, and that the entries were made in the regular course of business.

I submit no exception to the hearsay rule has been fulfilled here, your Honor.

The Court: I think as to this inquiry it has not.

Q. (By Mr. Enright): Were you present at any time when a conversation was had between the tenant or the painter with Miss Cosgrove concerning the satisfactory or unsatisfactory manner in which that living room in 119 was painted?

A. He went back and did the walls over twice after the tenant got in.

Mr. Whyte: I move the answer be stricken as not responsive to the question.

The Court: May I have the question?

(The question was read.) [280]

The Court: That answer is stricken. That answer was not responsive to the question.

Q. (By Mr. Enright): My inquiry, Mrs. Ken-

(Testimony of Maude Kennedy.)

nedy, so you understand, is, were you present at any time when there was a conversation? You see, you would answer yes or no, you were present when the conversation—— A. Yes.

Q. You were present when there was a conversation? A. Yes.

Q. Who was the conversation between?

A. The painter and the tenant. You mean after it was painted?

Q. Yes. A. Yes.

Q. At any one of these conversations was Miss Cosgrove present?

A. No, she never saw the tenant.

Q. Is the tenant still living there?

A. Yes.

Q. Was the apartment living room painted twice after the first painting?

A. Yes, it was.

Q. You had a request from the tenant to have the living room repainted?

A. Yes, because it wasn't covered. [281]

Q. Will you be the manager and in control of the Western Arms' books on next Monday?

A. No, I won't.

Q. Your employment at the Western Arms——

A. I resigned as of tomorrow night, the night of the 15th.

Mr. Enright: I might point out to the court that all the records pertaining to the rental of these apartments are within the order of this court, that they be retained by the plaintiff at the Oliver



(Testimony of Maude Kennedy.)

Cromwell Apartments, and they are available to them if they want to bring them in.

The Court: Apparently, this lady will not have authority to comply. She will not have the authority on the part of the employer to possess the records on Monday afternoon, so we can't hear her at that time, unless the term of her employment be extended.

Mr. Enright: If they want to bring in the books, I am quite certain the lady will come on down here Monday.

Q. (By Mr. Enright): You will, won't you, if somebody wants to bring in the records——

A. Certainly. I just wanted you to know I had no right to do it.

Mr. Enright: Will you bring in the books, Mr. Whyte, for her testimony?

Mr. Whyte: I don't have the books, Mr. Enright. [282]

Mr. Enright: The court order is that the books be kept and records be kept out at the Oliver Cromwell Apartments. So far as I am concerned, they are there in the custody of the plaintiff. That order has never been vacated.

The Court: I don't know that the court has made any order with respect to that.

Mr. Enright: Yes.

The Court: The court dismissed the action and satisfied the judgment. Before a satisfaction of judgment is of record as to that portion of the case in which there was an adjudication, and there has

(Testimony of Maude Kennedy.)

been a dismissal of that portion of the case you wished, there was not an adjudication, so the court hasn't done anything by way of ordering things kept intact, except the court has exercised its jurisdiction over its Receiver.

Mr. Enright: I thought that included the books and records. That was my interpretation of the order. I may be in error. I appreciate your Honor's statement about the dismissal of the action.

Mr. Whyte: Somehow we will have to arrange for this book which Mrs. Kennedy has referred to be brought in, whenever the court wishes to resume.

Mr. Enright: Yes. I would say this witness, I called her, and she has not control of those books on Monday.

The Court: She will be excused at the conclusion of [283] her testimony today. If you want to call her back again you can.

Mr. Enright: I am through with the witness at this time.

Mr. Whyte: I want her to come back, to testify with reference to the books which are presently under her control.

The Court: Please be here on Monday at 2:00 o'clock.

The Witness: Yes. But I can't bring the books, Judge.

The Court: You are not expected to.

Mr. Enright: Thank you.

The Court: We don't expect you to.

(Testimony of Maude Kennedy.)

Mr. Enright: That is all.

The Court: They will have to make their arrangements.

The Witness: That is on the monthly reports. I send in the monthly report every month to Mr. Hallberg, and the vacancies were on that.

The Court: Well, they can produce the records, but they apparently want you, too.

The Witness: I see.

Mr. Enright: Step down.

Mr. Whyte: I have a question or two, Mr. Enright.

#### Recross Examination

Q. (By Mr. Whyte: You are leaving the Western Arms tomorrow night, Mrs. Kennedy?

A. I have resigned as of the night of the 15th.

Q. You have turned in a written resignation?

A. I certainly did.

Q. You weren't by any chance requested to leave, Mrs. Kennedy?

A. I told you that I resigned.

Q. You haven't answered my question. Were you requested to leave?      A. I was not.

Mr. Whyte: I have no further questions.

(Witness excused.)

Mr. Enright: I have another manager. I said short. All I am going to find out is the number of times Mr. Hallberg was over to this other apartment house, from her.

The Court: We will hear your next witness.

EDNA LIPPHARDT

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Edna Lipphardt; L-i-p-p-h-a-r-d-t. I am a little hard of hearing.

The Court: The witness requests that you stand closer to her, because she is hard of hearing.

Don't overlook the reporter has to get everything, and it is a tendency to speak down when you are close to a witness. [285]

Direct Examination

Q. (By Mr. Enright): Mrs. Lipphardt, were you the manager of the Fountain Manor Apartments during the period November 30, 1953, through February 28, 1954? A. Yes.

Q. Have you been an apartment house manager for some period of time in this community?

A. Yes.

Q. How long? A. Since 1930.

Q. Did you have occasion or did you meet Mr. Hallberg on or about December 1, 1953?

A. Yes.

Q. On how many occasions did you see Mr. Hallberg at that apartment house during the period December 1, 1953, to and including February 28, 1954.

A. I would say between seven, not less than twelve times; perhaps seven, eight or nine times.

(Testimony of Edna Lipphardt.)

Q. Were you introduced to Miss Cosgrove about December 1st? A. Yes.

Q. State what was said at the time of the introduction.

A. He told me Miss Cosgrove would be in charge of all the decorating, that she was his right hand and that she would [286] supervise the buildings for him.

Q. Did she, Miss Cosgrove, collect the moneys from you as the manager?

A. Not from me personally, no; from the desk clerk who took care of the books.

Q. Now, did Miss Cosgrove purchase some supplies for the particular apartment house you were managing? A. Yes.

Q. And directing your attention to the fiberglas draperies, that subject, were some purchased?

A. Yes.

Q. And the cost of those draperies, if you know?

A. Yes.

Q. What was the cost?

A. The cost, one particular pair I know of was \$29.75; at least, that was the tag on the drapery. Whether that was actually what she paid or not, I don't know. That was the tag on the drapery.

Q. You said twenty-nine. Did you mean twenty-three?

A. There was one \$29.75 and one \$23.75.

Q. What had you been paying for draperies at that apartment?

A. In that particular building we would pur-



(Testimony of Edna Lipphardt.)

chase draperies around \$6.95, \$7.95, and maybe as high as \$10.50.

Q. Did you have any difficulties concerning painting [287] while you were manager in that period of time?

A. Yes, we had four different sets of painters in the three months.

Q. Who brought those or employed those painters?      A. Miss Cosgrove.

Q. Were there any holding up of the renting of any of the apartments while they were being painted?      A. I beg your pardon?

Q. Was there any holding up of the renting of apartments for their being painted?

A. Yes, there was one particular apartment that we had ready—in fact, had rented. We had no lamps to put in the apartment and there were no draperies. It stood idle for a week, waiting for those.

Miss Cosgrove had promised to bring the lamps from the Oliver Cromwell, another apartment house. When she brought them they were three very small table lamps, and two of them had no shades whatever, and for the third one there was a bridge lamp shade.

Q. Now, directing your attention to the subject matter of a petition to redecorate certain apartments, did any of the tenants move out of this apartment house as a result of their being dirty or unclean?      A. Yes.

(Testimony of Edna Lipphardt.)

Mr. Whyte: Objected to as calling for the conclusion of [288] the witness.

The Court: Sustained. The answer is stricken.

Q. (By Mr. Enright): All right. Did you ever report to Miss Cosgrove or to Mr. Hallberg that tenants had moved out of that apartment house because the apartments were dirty or unclean?

A. I did not.

Q. Did Miss Cosgrove call you after a hearing of a petition here and ask you to sign a statement pertaining to that subject matter?

A. She came to my apartment with a statement.

Q. Prepared statement she asked you to sign?

A. Yes.

Q. State the conversation that occurred.

A. I refused to sign the statement, saying that the tenants had moved out because of the condition of the apartments, that that was not true.

Then there was another part to the statement about a stove; there was a discussion about a stove.

Q. This is a conversation you had with Miss Cosgrove? A. Yes.

Mr. Whyte: I am going to move to strike the answer to the effect that the tenants had not moved out because of the condition of the apartments. As to the reason why the tenants moved out would be entirely beyond the knowledge of [289] this witness. It is her conclusion, purely and simply.

The Court: I understand this is simply evidence of a conversation between this witness and Miss Cosgrove.

(Testimony of Edna Lipphardt.)

Mr. Whyte: Part of what she testified to in the last answer, Judge, was apparently a conversation, but I don't think that what she said about her conclusion, as to whether they moved out, purports to be what either she said or Mrs. Hallberg said.

However, I will let the record speak for itself there.

Mr. Enright: Yes, the record will speak for itself. I asked the question, did this witness ever tell Miss Cosgrove or Mr. Hallberg that tenants moved out of that apartment house because the apartments were dirty, and her answer was no.

I am now inquiring about the conversation had between Miss Cosgrove and this witness after that hearing before your Honor.

Q. (By Mr. Enright): What was the conversation you had with Miss Cosgrove concerning the subject matter of a stove?

A. An apartment was vacant. The stove was in not too good condition. Miss Cosgrove said, told me she was going to order a new stove.

In the meantime I rented the apartment and the people moved in at the same price we had always gotten for the apartment. About five days after the party had checked into [290] the house a new stove was delivered and placed in the apartment. But they didn't rent the apartment because a new stove was put in there. That was the bone of contention.

Mr. Whyte: Again objected to as purely conclusion of the witness.

(Testimony of Edna Lipphardt.)

The Court: That was not the reason the apartment was rented, that that was a bone of contention is stricken.

Q. (By Mr. Enright): Was that the subject of the conversation you had with Miss Cosgrove at the time she asked you to sign this written statement?

A. Yes.

Mr. Enright: May I ask the testimony be reinstated?

Q. (By Mr. Enright): Did you hear any conversations between any one of these four different painters and Miss Cosgrove during this three-month period? You could answer that yes or no, whether you heard the conversation.

A. Yes, I heard them.

Q. Were there more than one conversation with the painters?

A. Yes, there were quite a few; not only conversations but arguments.

Q. Well, that is a conclusion, Mrs. Lipphardt. Now, will you state, as best you can recollect, the substance, the words used by Miss Cosgrove and the painters, commencing with the first conversation?

A. The first painters that we had in the building working was the Superior Paint Company, Mr. Kelly, and a man working for them. The particular work being done was a dinette being painted.

Miss Cosgrove objected to the degree of color. This was supposed to be a pale green and she said there was too much yellow in it.

So Mr. Kelly finished painting the dinette and



(Testimony of Edna Lipphardt.)

walked off the job.

Q. Now, please state the next conversation and not what you observed, but, as best you can recollect, what was said by Miss Cosgrove.

A. I think the next group, Mr. Brewer and a Mr. Provenshore; they again did work that Miss Cosgrove did not like.

Q. What did she say? You must tell us what she said.

A. I see.

Q. That is the point. That is the point.

A. She didn't like the colors. The painters couldn't get the degree of color she wanted, or the tone, the right tone in the color.

Q. That was the substance of the conversation?

A. Yes, sir.

Q. What happened to those painters?

A. They quit. Or she fired them; I am not sure on [292] that. But, anyway, they were off the job.

Q. Is that in substance the conversations that were had with the other painters?

A. I beg your pardon?

Q. Was that the substance of what was said?

A. Yes, that seemed to be the main objection always, was the color.

Q. Do you recollect a conversation being had by Miss Cosgrove and the painters concerning painting Apartment 323?

A. Yes. That again was Mr. Kelly, the painter. He was called in to look at the apartment.

There again it was a green wall, a green carpet, and Miss Cosgrove wished to change the color in the



(Testimony of Edna Lipphardt.)

living room, in particular, and Mr. Kelly refused to do it because he said the paint was too good on the wall and it didn't need painting.

Q. What is Mr. Kelly's first name?

A. That I don't know.

Q. What is his employer's name?

A. The Superior Paint Company.

Q. They are here in Los Angeles, are they?

A. Yes.

Mr. Enright: You may cross examine. [293]

#### Cross Examination

Q. (By Mr. Whyte): Mrs. Lipphardt, are you still employed as the manager of the Fountain Manor Apartments? A. No.

Q. May I ask when you left that position?

A. What?

Q. May I ask when you left that position?

A. On March 1st.

Q. Were you discharged by Mrs. Tidwell?

Mr. Enright: To which objection is made——

The Witness: Yes; Mr. Udall.

Mr. Enright: ——on the ground it is incompetent, irrelevant and immaterial whether Mr. James Udall, Mrs. Tidwell or anybody else doesn't like this witness. It is immaterial as to her rendering services to this Receiver.

The Court: It certainly is immaterial on that basis, but it might enter into the picture of bias, I don't know. We will let it stand.

(Testimony of Edna Lipphardt.)

Mr. Whyte: That was the purpose of the question, your Honor.

Q. (By Mr. Whyte): You mentioned a Mr. Kelly, a painter, who walked off the job.

A. Yes.

Q. Isn't it a fact that you told Mrs. Hallberg you [294] wanted to get rid of Mr. Kelly on that job?

A. No.

Q. Didn't you tell Mrs. Hallberg that Mr. Kelly was a friend of the former manager and that you didn't want him around?

A. No.

Q. How long had it been before December 1, 1953, since the apartments had been painted at the Fountain Manor?

A. Now, let me understand your question.

Q. Surely.

A. You mean any apartment in the building?

Q. Yes. Can you tell me how often the apartments were painted under Mr. Richman?

A. Whenever they needed it.

Q. Let's take a particular apartment. About how long did each apartment go, in point of time, before it would be repainted?

A. That would be dependent on the particular apartment. One apartment might be dreadfully abused and might have to be painted in six months, and another might go two or three years. It depends on individual apartments.

Q. When you said "dreadfully abused" you mean the apartment would become frowzy-looking or dirty-looking in a period of a few months?

(Testimony of Edna Lipphardt.)

A. I am just speaking—you almost asked me a hypothetical [295] question, and I am answering it that way.

I said an apartment might become so soiled in six months, and have to be done, and another might go for two years.

Q. In either event, at the expiration of a few months or six years or a few years the apartment would become dirty in appearance?

A. That is right.

Q. So that from time to time there were individual apartments at the Fountain Manor which were dirty in appearance?

A. Yes. Now, for instance, I might even quote one that you may bring up later. Apartment 212, the bathroom needed painting very badly. The lady that lived there was an elderly lady who couldn't stand the smell of paint, and she asked us not to paint it while she was in the apartment. Naturally, that was in bad condition.

And another one you might bring up was Apartment 117. The man there was afflicted with asthma and he didn't want any work done while he was in there.

Q. Now, how did you find your vacancies at the Fountain Manor, Mrs. Lipphardt? What was the percentage of vacancy in the apartment building, let's say, in the six months immediately prior to Mr. Hallberg's being appointed the Receiver?

Can you tell me approximately what proportion

(Testimony of Edna Lipphardt.)

of the [296] apartments were vacant at any one time?

A. Yes, we would carry—I don't know percentage, but we would carry two or three vacancies. We might go as high as five, and then maybe we would get down to one.

Q. This was prior to December 1, 1953?

A. Yes. But you must remember we had 42 doubles and 6 triples, and big apartments naturally are vacant more often than small ones. We would run five and six vacancies.

Q. How was your vacancy factor from December 1, 1953, up to February 28, 1954?

A. There again, as I say, we ran—we might have had as high as six, seven or eight at one time, and then be down again to two.

Q. Was it about the same vacancy factor as had obtained prior to December 1st?

A. Yes, just about.

Mr. Whyte: Just a moment. I don't think I have any more questions, but I would like to speak to my client a moment.

Q. (By Mr. Whyte): Do I understand you to say, Mrs. Lipphardt, that the maximum time during which an apartment would be left unpainted was about three years?

A. I don't think I said it would be left unpainted three years. I said it might go that long without having need to be painted. There is a distinction there, you know. [297]

Q. You see, you are an apartment manager. I



(Testimony of Edna Lipphardt.)

am just a poor lawyer and I don't really know about these matters of managing apartment buildings.

In any event, there were occasions when an apartment in the Fountain Manor would go for, say, three years without having been painted?

A. I wouldn't be sure of that, without looking up the records.

Mr. Whyte: I think that is all, Mrs. Lipphardt. You may step down as far as I am concerned.

#### Redirect Examination

Q. (By Mr. Enright): Are you employed now, Mrs. Lipphardt? A. I beg your pardon?

Q. Are you presently employed?

A. Oh, yes.

Q. Where? A. At the Lakeview Arms.

Q. Are you manager? A. Yes, sir.

Q. Apartment house? A. Yes.

Q. You have been there quite a while?

A. Yes; 94-unit building.

Q. Concerning this vacancy factor, do you recollect [298] how many vacancies there were when the Receiver took over, that day as compared with the vacancies on the day he left, February 28th?

A. Without looking at the records, as near as I can remember the day he took over, we had 406 vacant, which was being painted at the time, and 301, a triple, and I believe on the day Mr. Hallberg gave up the receivership 301 was vacant, and 117.

Q. Has it been your experience for the years



(Testimony of Edna Lipphardt.)

that you have been managing apartments in this community, that there is not as great a vacancy factor in the winter months as there is in the summer months?      A. That is true.

Mr. Enright: No further questions.

Mr. Whyte: No further questions.

(Witness excused.)

Mr. Enright: Thank you for accommodating these two witnesses.

May she be excused?

The Court: Yes.

Mr. Whyte: Shall I call my next witness, your Honor?

The Court: Yes, please.

Mr. Whyte: Mrs. Hallberg, will you take the stand, please? [299]

### CATHERINE COSGROVE HALLBERG

called as a witness on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Catherine Cosgrove Hallberg.

### Direct Examination

Q. (By Mr. Whyte): You are the wife of Mr. Roy Hallberg, the Receiver in this action?

A. I am.

Q. For how long have you been Mrs. Hallberg?

A. Since 1940.

(Testimony of Catherine Cosgrove Hallberg.)

Q. Where did you go to school, Mrs. Hallberg?

A. University of Minnesota.

Q. Did you receive a degree there?

A. I received a degree of Bachelor of Business Administration.

Q. In what year? A. 1932.

Q. Will you please state what, if any, business experience you had following your graduation from the University of Minnesota in 1932?

A. Yes, I was statistician for a branch office of Payne Weber & Company, and then in New York I was an account [300] executive or investment counsel with Johnston & Longquist.

Q. Were you at that time one of two women investment counselors in New York?

A. Yes, based on the fact there were just two women in the organization of the Investment Counsel Association of America, when it was founded in 1938, or something like that.

Q. How long did you keep up your investment counseling work in New York?

A. I continued working until about 1942, shortly before our daughter was born; longer than that, but——

Q. For how long had you been employed with Johnston & Longquist?

A. Until about 1940, I think.

Q. My question was for how long had you been employed, for a period of how many years by them?

A. Close to three years, Mr. Whyte.

Q. What, if any, decorating training or experi-

(Testimony of Catherine Cosgrove Hallberg.)

ence had you had, Mrs. Hallberg, prior to this receivership?

A. Just the decorating experience, now?

Q. Yes. Take decorating first and we will take housekeeping later, if that is necessary. Just decorating.

A. Well, from an early interest in the subject to a course at the Traphagen School of Design, as color consultant to a general overseeing of certain properties that some of [301] our clients had at Johnston & Longquist. We had a real estate firm handling them, but Mr. Johnston was interested in overseeing the real estate firm, to doing our various apartment buildings, assisting friends. I haven't gone in for it commercially.

Q. You mentioned the Traphagen School of Design. Where is that located?

A. That is in the 40's on Broadway in New York.

Q. For how long did you attend that institution?

A. That was during the course of the one school year.

Q. What year was that?

A. It was just while I was at Johnston & Longquist. It was approximately '39, I believe.

Q. How often did you attend classes there, Mrs. Hallberg?

A. In the evenings, two or three times a week.

Q. What did your courses consist of?

A. I took just the color consulting.

(Testimony of Catherine Cosgrove Hallberg.)

Mr. Whyte: May I have the incinerator files, please, Mr. Enright?

Mr. Enright: They are here some place. Maybe Mr. Richman could help you. I am not familiar with them myself. Martin, Hahn & Camusi produced them.

Mr. Whyte: The Canterbury, Mr. Richman.

Mr. Enright: You have the Oliver Cromwell.

Mr. Whyte: That is what I want.

Mr. Enright: You said the Canterbury.

Q. (By Mr. Whyte): Mrs. Hallberg, I call your attention to a file marked Oliver Cromwell Incinerator, and ask you whether you have ever seen that before?

A. Yes, I have, in the office.

Q. I show you a copy of a letter dated December 30, 1953, addressed to Mr. Roy E. Hallberg from John Whyte, reading:

“Dear Roy,

“I am returning herewith the files covering the installation of incinerator equipment at both the Canterbury and the Oliver Cromwell apartment buildings.”

Do you recollect having received the original of that letter on or shortly after the date it bears?

A. Yes, I do.

Q. Following the receipt of that letter, together with the files enclosed, did either you or Mr. Hallberg in your presence request Mr. Harrison, the bookkeeper, to forward to Air Pollution Control, Inc. the blueprints with reference to the installa-

(Testimony of Catherine Cosgrove Hallberg.)

tion of the incinerator equipment at the Oliver Cromwell and the Canterbury.

A. Yes. After we received the letter, it was just about one day after that, it was on the part of the table [303] that all mail was always placed for Mr. Hallberg's attention, and he saw it and he said, "Well, that is that. We go ahead. Attend to this," to Mr. Harrison.

I don't remember the exact words, but certainly to that effect.

Q. You received a warning notice from the smog control authorities on or about January 13th, is that correct? A. That is correct.

Q. What, if anything, did you or Mr. Hallberg in your presence do after you received that warning notice?

A. Our first move was to call Mr. Manalis of the Oxyaire and told him about it immediately.

He said it was quite all right, he would call the Air Pollution Control Authority and inform them that they were going to progress the work, progress with the work as soon as possible, and that we didn't have to worry about it, he would take care of it.

Q. Who was it that called Mr. Manalis, can you recall?

A. Mr. Harrison and I have both called Mr. Manalis any number of times.

Mr. Enright: I move to strike the answer as not responsive.



(Testimony of Catherine Cosgrove Hallberg.)

The Witness: I have called him and I know Mr. Harrison called him.

Mr. Enright: I move to strike the answer as not [304] responsive. The question was who called him on that occasion.

The Court: Well, I take the answer to be they both called him.

Mr. Enright: I don't know. I guess you could deduct that.

The Court: Well, strike the answer. Ask the witness to try again.

Q. (By Mr. Whyte): I am speaking now of the conversation which took place with Mr. Manalis immediately after the receipt of the warning notice on January 13th, who called Mr. Manalis at that time?

A. Mr. Harrison called him the first time, I believe.

Q. Were you present at that conversation?

A. There were so many calls to Manalis, John, I don't remember if it was the first time when I was there or not.

Q. Did Mr. Harrison report to you his conversations with Mr. Manalis? A. He did.

Q. What did he say?

A. He said that Mr. Manalis would take it up with the Air Pollution Control Authority, we weren't to worry, and he would take care of it.

Q. What was the next occasion upon which you or Mr. Hallberg, to your knowledge, had conversations with Air [305] Pollution Control, Inc.?

(Testimony of Catherine Cosgrove Hallberg.)

A. Probably after the legal document came. I don't know what you call it.

Q. By "legal document" you mean the citation, the criminal complaint that was issued about January 27th? A. Yes.

Q. Following the issuance of that criminal complaint on or about January 27th, what did you do?

A. I went to the Air Pollution Control Authority. There were calls to Mr. Manalis first, and he again said it was nothing, he would handle it, and at the most it would cost \$50.00. But, nevertheless, I went out to Mr. Gordon Larson's office.

Q. There has been some testimony in this record with reference to the breakdown of refrigeration at the Western Arms.

Can you tell us when you first—I mean you personally, Mrs. Hallberg,—when you first had knowledge that the refrigeration system had gotten into trouble at the Western Arms Apartment Hotel?

A. The afternoon of February 17th; it was on a Wednesday.

Q. Will you state what happened at that time, please?

A. I was in the building twice that day. The second time was about 4:30 in the afternoon, when I had gone back [306] to pick up some draperies.

I talked to the young chap down in the service department, because Mrs. Kennedy had said one box was out. I talked to him and asked him how he was coming along, and he said, "Oh, fine."

Q. Go on. A. That was the first time.

(Testimony of Catherine Cosgrove Hallberg.)

Q. This was the afternoon of the 17th?

A. This was the afternoon of the 17th.

Q. What, if anything, happened on the 18th?

A. On the 18th, when I got into the office, Mrs. Findeisen, who was in the office at that time, and not Mr. Harrison, informed me that Mrs. Kennedy had called the previous evening. Am I allowed to say what she said?

Q. You can tell what Mrs. Findeisen said to you, yes.

Mr. Enright: I object. It will be hearsay. Let her recite what she did. She received a phone conversation.

The Court: Let's follow Mr. Enright's suggestion.

Mr. Whyte: I beg your pardon?

The Court: Let's do what Mr. Enright suggested.

Mr. Whyte: I didn't catch his suggestion. That is the reason I inquired.

Mr. Enright: My point is the witness should be asked did she receive a telephone call. She did. Then what did she do, the acts. That is telling what happened, without [307] abusing the hearsay rule.

Q. (By Mr. Whyte): You received a telephone call on the 18th of February?

A. That is right.

Q. From whom?

A. Miss Findeisen had, before I arrived in the office, from Mrs. Kennedy the first thing in the morning reporting they had run into trouble, and

(Testimony of Catherine Cosgrove Hallberg.)

she had overheard a telephone conversation between the California Refrigeration young chap and the 25-year-old owner-manager of the concern, stating they didn't know what was wrong.

So she had taken it upon herself to switch back to Mr. Daugherty of the Normandie Refrigeration, whom she had known for a long time. He had worked there that night. As a matter of fact, she also mentioned she had called Mr. Richman.

I had also telephone messages from California Refrigeration. By that time the die seemed to be cast and I——

Mr. Enright: I move to strike the entire statement of her reporting on something that violates the hearsay rule. Apparently she did nothing herself.

The Witness: I phoned Mr. Hallberg immediately.

Mr. Enright: May I have the answer stricken so far?

The Court: The motion is granted, except as to the part "I called Mr. Hallberg immediately." That part may stand. [308]

Q. (By Mr. Whyte): You say you called Mr. Hallberg immediately. That was sometime on the morning of February 18th? A. That was.

Q. Do you recall about what time, Mrs. Hallberg?

A. Probably it was around 10:00, 10:30.

Q. What did you tell Mr. Hallberg?

Mr. Enright: I object on the ground of hearsay.

(Testimony of Catherine Cosgrove Hallberg.)

The Court: I don't think so.

Mr. Enright: All right.

The Court: We are inquiring into the quality of acts of Mr. Hallberg and those who worked with him. This question may be answered.

Mr. Enright: Very well.

The Witness: I explained to Mr. Hallberg that the California Refrigeration had quoted \$900.00 repair price. They wished to flow out the pipes. They inferred they were full of—I can't remember the word now—and that the Normandie Refrigeration had been on the job, had said they could put it back in running order without this major operation. In other words, I gave him all the facts.

Q. (By Mr. Whyte): Do you know what, if anything, Mr. Hallberg did?

A. Mr. Hallberg, through having had experience——

Mr. Enright: I move to strike "through having had experience." [309]

The Court: That portion of it will have to go out. You will just have to tell us what you saw him do or heard him say.

The Witness: Mr. Hallberg decided that——

Mr. Enright: I move to strike what Mr. Hallberg decided.

The Court: You can't tell us what was in his mind.

The Witness: Well, he told me that.

Q. (By Mr. Whyte): What did he tell you or what did he do that you saw?

A. Mr. Hallberg told me that he would be very



(Testimony of Catherine Cosgrove Hallberg.)

inclined to go along with the Normandie Refrigeration theory; they were there, that was it. We would see if they could do as they promised to do.

Q. Did Mr. Hallberg, to your knowledge, go over to the Western Arms and inspect the refrigeration after it had been installed?

A. Yes. He came in later that day, oh, after it had been installed.

Q. Tell us about when he came in and what he did.

A. He came in, we parked—we always parked right by that thing—came in and looked at it. I was there with him, too. I met him.

And I think we talked to John Daugherty's assistant, and he again decided that was where he would cast his opinion. [310] So we walked away until the thing was completed.

Q. Is it your testimony that Mr. Hallberg and yourself visited the Western Arms on the 18th of February and inspected the refrigeration equipment?

A. If you can say being there and watching a little bit is inspecting, yes.

Q. Mrs. Hallberg, were you present in the courtroom when Mrs. Kennedy, the manager of the Western Arms, testified that either on the 17th or 18th of February, or the 18th or 19th, she was not sure which, she put in several telephone calls to Mr. Harrison at the office of the Oliver Cromwell, in an effort to reach Mr. Hallberg?

A. I heard that.

(Testimony of Catherine Cosgrove Hallberg.)

Q. Was Mr. Harrison present—was Mr. Harrison employed as the bookkeeper or in any other capacity with the receivership either on the 17th, the 18th or the 19th of February?

A. He was not.

Q. Who was in the office at that time?

A. Miss Findeisen.

Q. You recollect about when Mr. Harrison had been discharged? A. On February 12th.

Mr. Whyte: I have no further questions on direct, your Honor. [311]

#### Cross Examination

Q. (By Mr. Enright): Mrs. Hallberg, as I understand it, you phoned to Mr. Hallberg on the 18th concerning this refrigeration?

A. That is right.

Q. In the morning? A. That is right.

Q. Where did you phone to him?

A. I phoned to him at Mr. Byram's office and he called back very soon after that.

Q. Had you ever told Mr. Harrison or anyone else that they could reach Mr. Hallberg in Mr. Byram's office? A. I had not.

Q. So far as you know, no one knew that Mr. Hallberg could be reached at Byram's office, the County Assessor's Office, excepting yourself, is that right?

A. That I am not sure of; possible.

Q. Now, directing your attention to Exhibit B,

(Testimony of Catherine Cosgrove Hallberg.)

you did observe Mr. Hallberg make the notations on Exhibit B?

A. I did not observe him make them on many, many occasions.

Q. But on some occasions in the evening you did see him make his entry in his diary?

A. Some, yes.

Q. That would be down there at your home at Corona del [312] Mar?

A. He hauled that thing out frequently. I have seen them many times.

Q. And that would be on occasions when you, would tell him what had occurred during your experience of the day?

A. I saw him take it out of his pocket on other occasions, too, Mr. Enright.

Q. Will you answer my question as to this: He would make entries shortly after or at the time you reported to him as to what occurred during the day?

A. Well, I wouldn't say all the time, no.

Q. But usually that is what he did?

A. Sometimes.

Q. Sometimes?           A. Yes.

Mr. Enright: No further questions.

Mr. Whyte: Step down, Mrs. Hallberg.

(Witness excused.) [313]

Mr. Whyte: The Receiver will now call Mr. Richman as an adverse party under Rule 43(b) of the Federal Rules of Civil Procedure.

FREDERICK I. RICHMAN

called as a witness under the provisions of Rule 43(b) of the Federal Rules of Civil Procedure, on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name?

The Witness: Frederick I. Richman.

Direct Examination

Q. (By Mr. Whyte): Mr. Richman, you were formerly the trustee for the Richman Trust, were you not?      A. I was one of the trustees.

Q. Who was the other trustee, sir?

A. Lyda Tidwell.

Q. Is that your sister?      A. Yes.

Q. For how long did you and your sister occupy the position of trustees for the former Richman Trust?

A. From the time it was organized, November 1, 1945, [314] to take effect January 1, 1946, until the Trust was terminated sometime in March of 1954.

Q. Did you manage the Trust properties during that period, sir?

A. I was agent for the trustees, and as such managed the properties.

Q. During that time you also carried on a private law practice in the City, did you not?

A. I had a license to practice law, but my practice was of very small purport.

(Testimony of Frederick I. Richman.)

Q. What do you mean by "very small," Mr. Richman?

A. Well, I got out of all court work, and it was confined to what matters I could handle, or, could be handled in my office, without requiring court appearances.

Q. What type of matters did you handle in your office?

A. Oh, lease work, drawing corporations, contracts.

Q. Who were among your clients?

A. For what period of time?

Q. During 1945, '46, when you say the Trust began, until 1954.

A. Well, I couldn't give you a list of my clients, without going over my books and records, to see who they were at the time. And I think, also, that is probably a privileged matter as between attorney and client.

Q. I am not asking for any communications that you had [315] with your clients, Mr. Richman. I am just asking you whether you did not represent some more clients during that period.

Mr. Enright: To which objection is made on the ground it calls for confidential matters. Thackery vs. Superior Court, Supreme Court decision, holding that the name of a client is confidential matter.

The Court: Objection sustained.

Q. (By Mr. Whyte): Mr. Richman, I call your attention to the Order appointing the Receiver in this proceeding, which was filed November 30, 1953.



(Testimony of Frederick I. Richman.)

Was a copy of that Order served upon you, sir?

A. Yes, it was; copy that belonged to the court. I had never been served and I was up in court, I believe, December 4th, and brought the point up, and Judge Tolin directed that one of the court's copies be served on me that day.

I had left word with you and Mr. Hallberg, and the managers, to please come into my office and see me, that I would take service. It was in court I was served on about the 4th of December.

Q. You read over this Order, did you not, following its service upon you in court on or about December 4th? A. Yes.

Q. I ask whether or not you noticed the paragraph on the third page of the Order commencing at line 5: [316]

"It is further ordered that Plaintiff Lyda Tidwell and her attorney and the defendants and their attorneys, and all other persons and each of them, be enjoined, and they are hereby restrained from disturbing possession of said Receiver or in any manner molesting the said Receiver of the said property, or interfering directly or indirectly with the administration of the receivership." [317]

You read over that language, did you?

A. I did.

Q. Following your reading of that language sometime on or shortly after December 4th, do you recollect having had any conversations with Mr. Harrison, who was acting as a bookkeeper for Mr. Hallberg?

(Testimony of Frederick I. Richman.)

A. I had a conversation, the first conversation—well, I had a conversation just at Christmastime. He called me to wish me a Merry Christmas, and I reciprocated. The other conversation was, I believe, the 29th of January, 1954.

Q. Did you call Mr. Harrison on that occasion?

A. I did.

Q. Did you go out to see Mr. Harrison?

A. I called, endeavored to call Mr. Hallberg. I endeavored to call you, Mr. Whyte, and I couldn't get you.

I called Mr. Harrison. I went out and saw Mr. Harrison on January 30, 1954.

Q. You talked to him at that time with reference to the administration of the receivership under Mr. Hallberg's guidance?

A. I talked with him at that time relative to the criminal complaint that was filed and the warrant out for me on the Oliver Cromwell incinerator matter.

Q. Yes. Are those the only conversations which you recollect having with Mr. Harrison during the period of Mr. [318] Hallberg's receivership?

A. No, I had other conversations with Mr. Harrison, after he was no longer in the employ of Mr. Hallberg.

Q. But the only two conversations you recollect at the time Mr. Harrison was in Mr. Hallberg's employ were the one he called you at Christmastime and the one where you called him on or about the last day of January and went out to see him at the apartment?

(Testimony of Frederick I. Richman.)

A. I think I had a conversation with him in the early part of February. He was interested in knowing how the court proceeding came out and what was going to happen. I called him and reported to him on that. I mean, that is the criminal proceeding at the Lincoln Heights jail.

Q. You called him and reported to him in regard to those proceedings?

A. It is my recollection I did, yes.

Q. Mr. Richman, it is true, is it not, that, we will say, during the period of the year immediately preceding December 1, 1953, while you were the operating head of the former Richman Trust, that you received compensation equivalent to ten per cent of the gross receipts from those properties?

Mr. Enright: To which objection is made on the ground it is incompetent, irrelevant and immaterial, because what he received as a one-half owner, a trustor-trustee beneficiary [319] agent, is in no manner comparable to or in any manner related to fees to be paid to a receiver. His particular qualifications make an entirely different rule applicable.

The Court: What he received as an owner would not be material. What he received as compensation for like services to those required to be performed by the Receiver, I think, would be proper.

Now, let's have the question and see if it is sufficiently narrow.

(The question was read.)

The Court: Overruled.

The Witness: My compensation was governed as

(Testimony of Frederick I. Richman.)

provided by the trust agreement, which my recollection is ten per cent of the gross income, exclusive of capital items.

Q. (By Mr. Whyte): During the period when you were serving as the operating head of the Richman Trust, did you have managers at the various apartment houses? A. I did.

Q. Under your direction and control?

A. There were managers at all the buildings, and as agent for the trustees they were under the control of the agent.

Q. Did you have a bookkeeper, either in your office or at one of the apartment houses, who kept the books for the trust operations? [320]

A. I want to answer your question correctly. There was no bookkeeper, as such, belonging to the Trust.

I had a secretary and a bookkeeper. I have always had what they call a combination help in the office, secretary and bookkeeper. And my secretary and bookkeeper kept the books of the Richman Trust. The Richman Trust never had a bookkeeper on its payroll.

The Court: Who paid the secretary?

The Witness: I paid the secretary out of mine. I paid the salary, all presents, all bonuses, the Social Security, unemployment on the secretary's salary, compensation insurance and other items.

The Court: That secretary was an employee of—

The Witness: Frederick I. Richman.

(Testimony of Frederick I. Richman.)

The Court: —Frederick I. Richman, rather than of the Richman Trust?

The Witness: That is right. There was never a charge for any overhead of any kind to Richman Trust.

The Court: Were the managers of the apartment houses employees of Frederick I. Richman or employees of Richman Trust?

The Witness: They were employees of Richman Trust.

Q. (By Mr. Whyte): What duties did your secretary in the office perform, other than those connected with the Richman Trust? [321]

A. Secretary to me. Take my dictation, do my typing, keep my personal books, keep my clients' account books, and there were about four or five other sets of books in the office that my secretary kept, as well as keeping the Richman Trust books.

My secretary got out the Richman Trust payroll, took off the monthly statements and typed them up, of the Richman Trust, and did whatever had to be done in the office.

Q. So that when you say that you paid your secretary out of your own pocket, you were paying him, not only for the work he did in connection with the Richman Trust, but for taking your dictation, typing your letters, keeping other books, looking after other clients in your office, is that correct?

A. That is correct. There was not enough work



(Testimony of Frederick I. Richman.)

in the Richman Trust to keep a full-time book-keeper busy or a secretary busy.

Q. Who picked up the rents at the apartment houses during the time you were operating head of the Richman Trust?

A. I generally did it. On occasions my secretary did it.

Q. By your secretary you are referring to Mr. Harrison?

A. I am referring to Mr. Harrison. I am referring to Miss Bowman, when she was my secretary, and Mr. Steiner, when he was my secretary, Mr. Schulberg, or whoever happened to be [322] my secretary at the time.

Q. Did your wife ever assist you in connection with the management of the five apartment buildings, Mr. Richman?

A. My wife assisted me to a certain extent, in being there when painters, upholsterers, and carpet men were there, to pick out color schemes and combinations, and on occasions to set up the units after the work had been done.

Q. Did she receive any compensation for that?

A. She did not. In fact, on those days she accompanied me I bought her lunch for her and never charged the Trust for it.

Q. You are familiar, I am sure, Mr. Richman, with the trust deed on the Oliver Cromwell upon which monthly payments were made? Are you familiar with that trust deed?

A. I know there was such a trust deed.

(Testimony of Frederick I. Richman.)

Q. During your regime as trustee you made payments on accounts of that trust deed, did you not?

A. I did.

Q. When did those payments fall due, Mr. Richman?

A. 1st of the month.

Q. Did you ever make any payments on accounts of that trust deed before the 1st of the month?

A. The records would be the best evidence of that. My recollection is on a few occasions I did, but generally they were made between the 1st and the 5th of the month. The [323] reason for that being the payroll was generally dated the last day of the month and was gotten out on the 1st day of the succeeding month.

As soon as the payroll was out of the way, why, then we could proceed to date the date of the checks for the month and it would be around sometime from the 2nd to the 5th, generally.

Q. You recollect, do you not, Mr. Richman, that Mr. Hallberg and I came to your offices on or about December 3rd and you were kind enough to spend several hours with us, in connection with Mr. Harrison, whom I think was present, too, explaining the nature of the assets and properties, some of the problems connected with their management? You recall that conversation, do you not?

A. I do. I am not too sure of the date, but it was in that time.

Q. You recollect that you told us that you would turn over as promptly as you could all of the files,

(Testimony of Frederick I. Richman.)

the trust deeds and original papers which you had in your possession pertaining to the Trust.

A. I did.

Q. You turned over those files, for the most part, in December of 1953, is that not true?

A. Mr. Hallberg was desirous of obtaining the papers. My recollection is that on the day you were there that he [324] took out the envelopes representing the title instruments covering the properties and signed a receipt that day.

The next day I drew up the set of the current working files. And then on Saturday the 5th of December, Mr. Hallberg came down and picked up the current files. They were in one filing case of mine, which I loaned to Mr. Hallberg, to keep them in, to use along with a key to it. I might add the filing case has been returned, but the key has not been returned yet.

About two weeks later, on a Friday, Mr. Hallberg called me and wanted to know if he could pick up the old files—we will call them dead files—of transactions that had been closed of Richman Trust, and wanted to pick them up on a Saturday.

I informed him that it would take some time to draw the receipt. He suggested that he would send Mr. Harrison down.

At that time I had not been able to replace my secretary-bookkeeper, and I had no one in the office. He suggested that he send Mr. Harrison down early Saturday morning to work on the receipts, and have

(Testimony of Frederick I. Richman.)

the receipts ready by the time he got in from Corona del Mar, which was done.

They were worked up and he receipted for them on Saturday, I believe, the 18th, or sometime in there, of December; whenever it was a Saturday. He had me down working on a Saturday. [325]

I told him I didn't particularly want to do it. It was near Christmastime and I was busy, but he said that he wanted the records so that he couldn't be criticized by the court and he had better pick them up on Saturday. I didn't know that he was working for the County of Orange and that was his only free time at that time.

Mr. Whyte: I move that be stricken as not responsive to the question, the last sentence.

The Court: Motion granted.

The Witness: He took out the files. I told him when they went out that I thought I had turned over everything to him, that the matter had been involved in litigation for almost two years and the files had been up in court and opened up, and were here and there, but to the best of my knowledge I turned everything over to him.

But that if I found anything else at any time in the future, that I would immediately transmit them to you. So he loaded them in the car and drove away.

Q. (By Mr. Whyte): Sometime in January or February you found the file in your office with respect to the parapet at the Oliver Cromwell, did you, Mr. Richman?

(Testimony of Frederick I. Richman.)

A. I don't want to use the word "file." The correspondence regarding the Oliver—or, the parapet at the Canterbury was only about four or five letters. They were lying on top of my desk in a stack that, for my purposes, I [326] label in my mind as current, but not pressing, awaiting future correspondence before action has to be taken.

I didn't want to send that document and other documents like it back to my filing system, to be put in a file in a cabinet and be lost and forgotten about. So they are kept on top of my desk.

Whenever it was, and I think it was the latter part of—I was awaiting a further letter from the Building and Safety Department. This pile stays on top of my desk and it is never touched. Whatever the date of the letter was, that was received from the Building Department, I immediately dug out the other papers and clipped them together and wrote the letter and sent them out to Mr. Hallberg; whatever the date was.

But there was only about five or six letters in the matter. It was not a regular Manila file, such as the other files were, as he had picked up previously, and was never kept in the filing cases.

Q. I believe you told us previously that your compensation as the operating head of the assets and properties constituting the former Richman Trust amounted to ten per cent of the gross receipts. Does that include legal services which you performed for the former Richman Trust?

A. Yes.



(Testimony of Frederick I. Richman.)

Q. By that do you mean that any legal services which [327] you performed for the Trust were included within the ten per cent gross receipts which you received? A. Yes.

Q. You made no further charge of any kind for your legal services, in connection with the administration of the affairs of the former Richman Trust? A. That is correct.

Mr. Whyte: No further examination at this time, your Honor. \* \* \* \* \* [328]

Los Angeles, Monday, May 17, 1954, 1:30 p.m.

The Court: We will have to take one or two interruptions, which I don't think will be very long this afternoon, but we will have to do it in order to get this matter done today.

You may proceed.

Mr. Whyte: Inasmuch as Mrs. Kennedy, the former manager of the Western Arms Apartment Hotel, will not be here until 2:00 o'clock, I will proceed to put on the case with reference to fees to the attorneys for the Receiver.

In that connection I should like to take the stand myself, to testify briefly. My expert witness is in Referee Hunt's courtroom on the third floor. I will request one of my clients to go up and get him so that no time will be lost.

The Court: Well, if you outline what you have done, the court is always supposed to be a judge of the fees. You can call an expert if you wish, but I am going to fix the fees in accordance with the

work you have done. If you want to enumerate that, I think it will suffice.

Mr. Whyte: Whatever your Honor's pleasure is, I wanted to build a record here which would be adequate for all purposes, and if you would like to have the expert we can bring him down. If you prefer not to have him——

The Court: It is entirely up to you, whether you want [331] to have him or not. You might be happier in your own mind if you do.

Mr. Whyte: Very well.

The Court: We will take a few minutes for this other case.

(Other court matters heard.)

The Court: We will return to the Tidwell case.

Mr. Whyte: I would like to call myself as a witness, if I may take the stand, please.

The Court: All right.

### JOHN WHYTE

called on behalf of the Receiver, first being duly sworn, testified as follows:

#### Direct Examination

The Clerk: State your name, please.

The Witness: John Whyte. First, I had better state, for the record, that I have performed each and all of these services enumerated in my original "Petition for Allowance of Fees to Attorneys for Receiver" filed herein on March 18, 1954, contained in Paragraph 7 thereof.

(Testimony of John Whyte.)

That Petition has been verified by me and I do hereby affirm that I have performed each and all of those services.

I further affirm that my partner, Richard Fitz-Patrick, devoted a very few hours to this matter. The great bulk of the work has been done by me, so that I will refer to myself [332] as the attorney for the Receiver.

I further affirm that I have performed each and all the services enumerated in Paragraph 3 of the "Supplemental Petition for Allowance of Fees to Attorneys for Receiver", filed herein on the first day of this hearing.

Those two Petitions cover a period during which services were rendered commencing on November 30, 1953, up to and including May 10, 1954, which is the last date upon which services were performed, as specified in the Supplemental Petition.

It is further my testimony that on May 11, 1954, I performed the following services, to which I devoted a total of five hours:

"Telephone call from Hallberg re evidence to be presented at hearing on May 12th. Figuring out breakdown of hours of attorney's time for inclusion in Supplemental Petition for fees to attorneys for Receiver.

"Studying Hallberg's deposition. Conference with Jefferson Mann, in preparation for his direct testimony as to reasonable value of Hallberg's services.

"Dictating and revising draft of hypothetical

(Testimony of John Whyte.)

question for Mr. Mann, the expert witness, as to the value of the Receiver's services."

As the court knows, I have been engaged in defending the [333] Receiver against the objections filed herein by defendant Richman to the Receiver's Report and Petition for fees during the course of this hearing, which has continued for, between two and three full court days.

I wish to testify further concerning the following matters:

Contrary to the Receiver's possible misapprehension, I was not advised of the January 13, 1954 notice, warning notice, received with reference to smoke issuing from the Oliver Cromwell.

With regard to the conversation——

Mr. Enright: Just a moment. I move to strike the witness' statement this was a warning notice. It was, in fact, a citation from the Authority.

The Witness: I will let the document speak for itself.

Mr. Enright: Then I move to strike your words as a conclusion on your part.

The Court: The words "warning notice" will be stricken.

The Witness: May the record show I am referring to the notice dated January 13, 1954?

The Court: Is it in evidence?

The Witness: I am not sure. Do you have the file, Mr. Richman?

Mr. Enright: Yes, it is here. No objection to reading it in the record or using it as an exhibit.

(Testimony of John Whyte.)

The Witness: Merely that it specifies what this document [334] is. It is a notice dated January 13, 1954, directed to the Oliver Cromwell Apartment Hotel:

“You are hereby charged with violating Section 24242 of the Health & Safety Code of the State of California by discharging smoke in excess of that allowed from chute fed incinerator.”

Perhaps before I forget it, this would be a good time for me to offer in evidence the whole of my deposition, which has been taken in this cause.

Mr. Enright: To which objection is made on the ground the witness is here available to testify. The deposition was merely taken as an aid in discovery. He can testify.

The Court: I think under Rule 26 it is admissible, isn't it, Mr. Enright?

Mr. Enright: I suppose within the discretion of the court. But I think it is perfectly clear that this witness, being an attorney at law, should be able to testify as to what services he rendered.

The Court: Well, we will look primarily to his deposition. The Rule allows the testimony in. Hence it is admitted.

The Witness: With reference to the conversation had with Judge Tolin on the evening of March 7th, that being a Sunday, March 7, 1954, I can state the following:

I was present in Mr. Hallberg's home at Corona Del Mar. After dinner Mr. and Mrs. Hallberg and myself discussed the [335] problem which had



(Testimony of John Whyte.)

arisen in regard to services rendered or materials delivered to the receivership during the month of February 1954, where the creditors' bills or statements were not received until after March 1. We were concerned as to whether or not those bills should be paid following March 1, when the Order entered by this court on February 28th had purported to terminate the Receiver's active duties of management as of 5:00 o'clock p.m. on February 28th.

Mr. Hallberg telephoned Judge Tolin in my presence and put the problem to him. I then came on the phone.

I mentioned to Judge Tolin that we had this problem concerning bills covering materials furnished or services performed during February of 1954, where the actual statement was not received until on or after March 1.

I explained that I had contacted the attorneys for the plaintiff and the defendant, and that Mr. Enright was opposed to the Receiver paying those bills, and that Mr. Camusi was agreeable that they should be paid by the Receiver.

Judge Tolin then and there instructed me to pay those bills, that is, that the Receiver should pay those bills and those payments are evidenced by the schedule which is attached to the Receiver's report herein.

I further desire to testify concerning the inability of Air Pollution Control, Inc. to install the incinerator equipment at the incinerators at the

(Testimony of John Whyte.)

Oliver Cromwell and the [336] Canterbury Apartment Hotels.

Mr. Enright: May I move to strike the word "inability" and may I request that the witness testify only to those matters he knows of his own knowledge, rather than hearsay?

The Court: Motion granted.

The Witness: I note from my time slip of February 3, 1954, that I made a notation of a telephone conversation with Mr. Tow of Air Pollution Control District re conference with City Attorney and inability of Oxyaire to perform their contract at Canterbury.

Mr. Enright: I move to strike the statement and the notation as being hearsay. So far as Richman is concerned, it all arose after the criminal citation.

The Court: May I have it read, please?

(The answer was read.)

The Court: Motion denied.

The Witness: In that connection I recall that I had a telephone conversation with Mr. Manalis on or about that date, during which I was advised——

Mr. Enright: Just a moment. I object to what he was advised as being oral hearsay. If the mere fact he spent his time in having a conversation may be a basis for compensation, that is one thing, but what Mr. Manalis told him is certainly hearsay.

The Court: It certainly would be hearsay on establishing [337] the fact. It would not be hearsay

(Testimony of John Whyte.)

on establishing the quality of conversation had between the two. Objection overruled.

Mr. Enright: "Quality" did I hear your Honor say?

The Court: Yes. I mean the kind and type of thing with which he was called upon to deal as an attorney.

Mr. Enright: Very well.

The Court: I am not appraising it as to good, bad or poor.

The Witness: Mr. Manalis stated, in substance, that a particular metal used in the dampers, which were to be installed in the incinerators at the Oliver Cromwell and Canterbury, was in short supply. That they did not have enough of that metal to put in the incinerator equipment promptly.

With that in mind, I called Mr. Tow, as I have so stated, from the reference to my time sheet.

Mr. Tow asked me to write him a letter, he being—Mr. Tow telling me he was concerned about the possibility that Oxyaire might not be able to get this incinerator equipment installed properly.

I then wrote a letter to Mr. Tow dated February 4, 1954, if counsel would like to see it.

Mr. Enright: I have seen it. Go ahead.

The Witness: Perhaps the easiest way would be to read it into the record, since I have only my office copy. It is [338] dated February 4, 1954.

(Testimony of John Whyte.)

“Air Pollution Control District, 5201 South San Pedro, Vernon, California

“Attention Mr. Tow

“Gentlemen:

“Following my telephone conversation with your Mr. Tow yesterday afternoon regarding the installation of Oxyaire, by Oxyaire of smog control equipment in incinerators located at the Oliver Cromwell Apartment Hotel, 418 South Normandie, Los Angeles, and the Canterbury Apartment Hotel, 1746 Cherokee, Hollywood, I discussed the matter over the telephone with Mr. Manalis, one of the officers of the Oxyaire.

“Mr. Manalis informed me that his company had not on hand sufficient material to install such incinerator equipment, which is in somewhat short supply throughout the country. Mr. Manalis further stated that his company would commence the work of installment at the Oliver Cromwell on Monday morning, February 8th, and the Canterbury a few days later. He estimated it would take two to three weeks to complete the installation.

“I trust this information will be helpful to you.

“Yours truly,

“John Whyte, Attorney for Roy E. Hallberg, Receiver for Assets of the former Richman Trust.” [339]

That information from Mr. Manalis, that there

(Testimony of John Whyte.)

was now on hand sufficient material of this heat resistant type metal to make the installation, reflected a change in his statement to me, which was made within the previous 24 hours, I believe.

Also, in reference to the reason why the Receiver's report was not filed within the normal time—was not filed as soon as it was contemplated, reference to my time slip for January 29, 1954, states:

“I had a telephone conversation with Judge Tolin re Receiver's first report. The judge decided to modify Rule 18(b)——”

that is, the local rules, Southern District of California,

“——and postpone filing report until March 20, 1954, so that it might cover a full three-month period.”

In regard to the date upon which Mr. Harrison was discharged from the Receiver's employ, this testimony has reference to the statement made by Mrs. Kennedy that she talked to Mr. Harrison on either the 17th and 18th or the 18th and 19th of February, and was informed by him that Mr. Hallberg could not be found.

I believe Mrs. Kennedy stated that was a call to the office at the Oliver Cromwell, where she reached Mr. Harrison, so she said.

My time slip for February 12, 1954, records the following notation: [340]

“Telephone call from Harrison re his discharge by Hallberg.”

You may cross examine, Mr. Enright.



(Testimony of John Whyte.)

Cross Examination

Q. (By Mr. Enright): Now, with reference to Mrs. Kennedy, she did testify she called the office of Mr. Hallberg at the Oliver Cromwell, didn't she? A. Yes, I so understood her.

Q. On cross examination you asked the leading question, did she talk to Mr. Harrison? She answered she thought she did, is that right?

A. She didn't testify she thought she did. She stated positively she did.

Q. The man at the office. Will you refer to your time sheets? A. (Witness complies.)

Q. You have them in front of you?

A. I do.

Q. You are seeking compensation for having expended approximately 93 hours, that is, the hours in support of your Petition, original Petition?

A. The time set forth in the original Petition is approximately 91 hours. The time set forth in the Supplemental Petition, with reference to the services performed in connection [341] with the administration of the business and affairs of the former Richman Trust, is 8.7 hours.

Q. Now, as I understand it——

A. That excludes the services I have rendered in connection with defending the Receiver and his attorneys against the objections filed by defendant Richman.

Q. As I understand your position, it is this, Mr. Whyte: For your services to the Receiver, up to the time you filed your Petition, you have approxi-

(Testimony of John Whyte.)

mately 92 hours and you desire to be paid \$3,000.00, is that right?

A. I have specified, I believe, in my Petition, my original Petition specified a figure of \$3,000.00 for the ordinary legal services heretofore necessarily performed from and after November 30, 1953, to and including March 17, 1954, together with such further sum as the court may in its discretion determine to be a reasonable attorney's fee for the ordinary legal services performed during that period.

Q. Will you please answer yes or no? You want \$3,000.00 for your ordinary services, is that correct?

A. That is correct.

Q. And you want an additional sum to be fixed by the court for extraordinary services?

A. If we are speaking of the period between November 30, 1953, and March 17, 1954, I do. I think the service rendered in connection with the defense of the criminal [342] citation in re smog matter is an extraordinary service.

Q. And for the ordinary services you would desire to be paid in excess of \$30.00 an hour for your time expended, is that correct?

A. I think it figures out to just about \$30.00 per hour.

Q. That is, 90 into \$3,000.00, it is more than \$30.00 an hour.

Now, directing your attention to your time sheets, you expended 2.1 hours on November 30th. That is before your appointment, is that right?

(Testimony of John Whyte.)

A. That is true.

Q. You expended six hours on December 1st, is that correct?      A. Correct.

Q. That was before your appointment?

A. Yes. I was not formally appointed until the 2nd.

Q. And on December 1st you feel you were rendering legal services when you went with the Receiver to the Union Bank and visited the apartment houses?

A. I do. My presence at the Union Bank—you are asking for my belief and my opinion—my presence at the Union Bank was necessitated because we had a legal matter of transferring the old account in Mr. Richman's name to a new account in Mr. Hallberg's name as Receiver. [343]

I, in fact, wrote out for the bank officials exactly the language which I wanted on that account.

In so far as the visits to the apartment house managers is concerned, Mr. Hallberg requested I go with him, meet them and explain the change in the legal situation which had taken place as a result of his appointment as Receiver.

Q. He hadn't been yet appointed, had he? There had been no order appointing him yet?

A. The order appointing Mr. Hallberg Receiver was filed herein on November 30th.

Q. That is the decision of the court to appoint, isn't that right, Mr. Whyte? Could you answer that yes or no?

A. If I may refer to my file, please.

(Testimony of John Whyte.)

Q. Yes.

A. My office file contains the following document:

The caption, "Order Appointing Receiver," with the Clerk's filing stamp November 30, 1953, on it.

This is the Order whereby Mr. Hallberg is appointed Receiver of all the real and personal property constituting the former Richman Trust.

Q. Had he qualified at that time?

A. I beg your pardon?

Q. Had he qualified and filed his oath on December 1st?

A. No, I do not think his bond was filed until the 2nd of December. [344]

Q. So he wasn't qualified to act until his bond had been filed and his oath had been filed, isn't that right, Mr. Whyte? You knew that, didn't you?

A. I can't answer that. That is a legal conclusion, whether he was qualified to act.

Q. Before he filed his oath you were his attorney and participated in his filing his oath and filing his bond, didn't you?

A. Yes, I participated in filing his bond.

Q. That was on December 2nd, wasn't it?

A. Yes.

Q. Before you had done that, you went to the apartment houses with Mr. Hallberg and legally advised those managers to turn over the money to Mr. Hallberg, didn't you?

(Testimony of John Whyte.)

A. In only one instance was any money turned over to us.

The Court: That wasn't the question. The question was whether you went and advised managers to turn over money?

The Witness: I believe we did.

The Court: On what authority, since he had not qualified as Receiver?

The Witness: As I view it at this time, I think the authority was probably erroneous, your Honor.

Q. (By Mr. Enright): You want to be paid six hours at \$30.00 an hour for that erroneous advice, don't you? [345]

A. If that six hours is erroneous advice, and bear in mind some of that six hours was for work performed at the Union Bank, which I have just mentioned, then the court is at liberty to disregard it.

Q. Now, just what authority did you have to go to the Union Bank or Mr. Hallberg on December 1st and tell the Union Bank——

The Court: He has answered that he didn't have any.

Mr. Enright: Very well, then.

Q. (By Mr. Enright): So the same would be true about your services at Union Bank that day?

A. May I explain my answer, please? We were faced with the practical situation that there were checks which had been written by Mr. Richman, which were outstanding. Some distribution had to



(Testimony of John Whyte.)

be made of the bank account immediately, in order that those checks could be handled.

I felt that that account matter should be taken care of at once, and I would do it again if I were in the same position.

The Court: Wouldn't it be better to rush up here with the bond for the Receiver and get him qualified first?

The Witness: We had a little difficulty getting the bond, your Honor. There were several conversations with the—if you will permit me to get my time slips——

Q. (By Mr. Enright): Please read your time slip of December 2nd about getting qualified. [346]

A. I will be glad to. The time slip for December 2nd—this is Mr. FitzPatrick's time slip—"Hallberg came in at 9:00 a.m. re his bond as Receiver. I telephoned Hecht at F & D. He said that he had been asked last night by Richman to put up a supersedeas bond on appeal. That if a writ of supersedeas were issued we might not be able to collect the premium on our bonds out of the assets of the receivership.

"He therefore wanted to wait until the issuance of the bond, to see if a supersedeas were issued. I reported this to Mr. Hallberg. We agreed to wait one hour.

"After a while Hallberg suggested that he talk to Judge Tolin's secretary. He called her, but got Judge Tolin, who said to get the bond in right

(Testimony of John Whyte.)

away and he would see that the premium was paid out of the receivership assets.

"I phoned Hecht and told him that if he weren't able to issue the bond we would get it elsewhere. He then asked if it was O.K. for him to telephone Judge Tolin and I said yes.

"He called back in a few minutes and said he would issue the bond. I gave him the title of the court and cause, and Hallberg went over to his office to get the bond. Whyte came in and I reported to him what had happened."

Q. That is the services rendered that day, is that correct, by your associate, Mr. FitzPatrick?

A. Yes. [347]

Q. Now, concerning your extraordinary fees that you desire to be paid, will you refer to your December 27th time sheet? A. Gladly.

Q. You spent .3 of an hour on that day, did you not? A. I did.

Q. And the .3 of an hour was expended upon the smog control contracts that later resulted in the criminal citation, isn't that right?

A. My sheet shows, "Examination of files with reference to installation of incinerator equipment for Canterbury and Oliver Cromwell and liability of Receiver to carry out contracts for such installation."

Q. You advised Mr. Hallberg that he should carry out the contract as a result of your having expended that .3 of an hour?

A. I did, sir. I advised him the contracts were

(Testimony of John Whyte.)

valid and binding, that they should be carried out. That the balance of the purchase price, which I think was 90 per cent, was not to be paid until after the installation had been performed and work approved by the Air Pollution Control District.

Q. Then you wrote a letter of transmittal on December 31st, transmitting the smog control file back to Mr. Hallberg? That is all there in the letter, isn't it?

A. My office copy is dated December 30, 1953, addressed [348] to Mr. Roy E. Hallberg at the Oliver Cromwell Apartment Hotel.

"Dear Roy:

"I am returning herewith the files covering the installation of incinerator equipment at both the Canterbury and the Oliver Cromwell apartment buildings."

Q. The next event, so far as your rendering extraordinary services, was on January 27, 1954, you received a telephone call from Mr. Harrison or someone that the citation, the criminal complaint had been filed January 27th?

A. I believe that is correct, Mr. Enright.

Q. That was .2 of an hour on that criminal citation and other matters on that date, isn't that right?

A. Yes. My time slips for January 27th show .2 of an hour, "Telephone call from Harrison re problems involved in preparing Receiver's first report. Also criminal citation for alleged violation of smog regulations."

(Testimony of John Whyte.)

Q. It wasn't until January 29th that you phoned Mr. Richman that he was named as a defendant in that criminal complaint, was it?

A. I don't believe I knew on the 27th that Mr. Richman was a defendant in the criminal complaint.

Q. But you did phone him on the 29th?

A. I phoned his office and left word at some time between 4:30 and 5:00 o'clock in the afternoon. [349]

Q. On February 1st you appeared in criminal court and expended 2.6 hours in handling that appearance, plus other matters, is that right?

A. I expended 2.6 hours on February 1st on a number of matters.

Q. Among the number of matters you attended to was this citation of this return of the criminal complaint?

A. Yes. I made an appearance in Department 30-A, Los Angeles Municipal Court, in re arraignment City of Los Angeles vs. Richman and McConnell.

Q. The total time expended was 2.6 hours?

A. For that and a number of other matters which, I suppose, I had better read into the record.

Q. All right. Go ahead and read from the time sheet for that day.

A. The appearance in Department 30-A I have already noted. The matter was set over until February 23rd at 9:30 a.m.

“Conference with Mr. Tow of Air Pollution Control re case. Telephone call to Harrison urging him

(Testimony of John Whyte.)

to see that Oxyaire gets to work immediately on installation of smog control equipment.

“Telephone from Mrs. Hallberg re result of court hearing. Dictating draft of first report of Receiver and Petition for Instructions and revising the same.” [350]

The Court: Before we proceed further, I have a note that Mr. Laugharn, who has been sitting here for some 15 minutes, has come in from another court to which he wishes to return, and he is a witness here.

Will it be agreeable with whoever wishes to call him, to call him now? We can suspend Mr. Whyte’s further examination until after that is done.

Mr. Enright: So far as I am concerned, yes, sir.

The Witness: Thank you.

(Witness temporarily excused.)

#### HUBERT F. LAUGHARN

called on behalf of the Receiver, first being duly sworn, testified as follows:

The Clerk: State your full name, please?

The Witness: Hubert F. Laugharn.

#### Direct Examination

Q. (By Mr. Whyte): Where do you reside, Mr. Laugharn?

A. 620 South Irving Boulevard, Los Angeles, California.

Q. What is your profession, sir?

A. Attorney-at-law.



(Testimony of Hubert F. Laugharn.)

Q. What is the name of your firm?

A. Craig, Weller & Laugharn.

Q. What is your office address?

Mr. Enright: I offer the stipulation that Mr. Laugharn [351] has practiced law in this community for a great period of time. He specializes, I think, in bankruptcy, if that will be of any help, and the general practice of law.

Mr. Whyte: I appreciate your offer to stipulate to the qualifications of the witness, but I will ask a few questions, if I may.

Q. (By Mr. Whyte): Where was your office located?      A. Where is it now located?

Q. Yes.

A. 817, 111 West Seventh Street Building, Los Angeles.

Q. In what year were you admitted to the bar in California?      A. 1923.

Q. Have you practiced law continuously since that date?      A. No, I haven't.

Q. For what period of time did you have other work in this area?

A. From 1941 to 1948 I was Referee in bankruptcy.

Q. Were you appointed Referee in bankruptcy by the judges of this United States District Court for the Southern District of California?

A. Yes, I was.

Q. In what specialty have you engaged in the practice of law, if any?

A. Well, I would say that it has been commer-

(Testimony of Hubert F. Laugharn.)

cial law, [352] bankruptcy, liquidation, out of court settlement of creditor and debtor problems. I think that probably would describe it.

The Court: Mr. Laugharn, Mr. Enright is having trouble hearing you.

The Witness: I am sorry.

The Court: This is a much larger courtroom than the one you have upstairs. It is kind of hard to hear.

The Witness: I am sorry. I would say it was a general, what you would call a firm that has a general practice, probate, commercial law. I don't know that anyone in the firm has ever handled a criminal matter, but I would say general otherwise.

Q. (By Mr. Whyte): Have you ever been appointed a Receiver in any court action?

A. Yes, I have been Receiver in quite a few court matters, trustee.

Q. Have you been appointed a Receiver in the Federal District Court?

A. Yes, on quite a few occasions.

Q. Also in the state courts?

A. Yes, on a number of occasions.

Q. Have you acted as an attorney for a Receiver appointed by either United States District Court or one of the state courts in California?

A. Yes, upon quite a number of occasions. [353]

Q. I direct your attention to the petition, "Petition for Allowance of Fees to Attorneys for Receiver" filed herein March 18, 1954, and ask you whether or not you have examined that document?

(Testimony of Hubert F. Laugharn.)

A. Yes, I have.

Q. I further call your attention to the "Supplemental Petition for Allowance of Fees to Attorneys for Receiver" filed herein on or about the first day of this hearing, and ask whether you have examined that document? A. Yes, I have.

Q. I direct your attention to a copy of the deposition of John Whyte filed herein, and ask you whether or not you have read that deposition?

A. Yes, I have.

Q. I refer you to documents entitled——

A. Just a minute. Could I just——

Q. Of course, Mr. Laugharn.

A. Yes. I knew the deposition I read had a number of corrections in it and I notice some of them here in pen and ink.

Q. I direct your attention to a document filed herein on November 30, 1953, entitled "Order Appointing Receiver", and ask whether or not you could recollect having read that document?

A. Yes, I read this. [354]

Q. I call your attention to a document headed "Petition for Authority to Employ Counsel" filed herein on December 2, 1953, and ask whether or not you have read that document?

A. Yes, I have.

Q. I direct your attention to a document entitled "Petition for Authority to Pay Christmas Bonuses" filed herein on December 18, 1953 and inquire whether or not you have read that document? A. Yes, I have.

(Testimony of Hubert F. Laugharn.)

Q. I next direct your attention to a document entitled "Petition for Authority to Renovate Individual Apartments Located in Five Apartment Houses Included Among Assets of Former Richman Trust" filed herein—I am not certain of the date—and ask whether or not you have read that document? A. Yes, I have.

Q. Next I call your attention to a document entitled "Objections and Answer to Report and Petitions of Receiver and his Attorney for Fees" filed herein on or about April 7, 1954, and ask whether or not you have read that document?

A. Yes, I have.

Q. Mr. Laugharn, please assume the following facts:

John Whyte, the attorney for the Receiver, has been engaged in the active practice of the law in Los Angeles, California, for a period of from 12 to 13 years; [355]

For 10 years he was associated with the office of O'Melveny & Myers, one of the leading firms of attorneys in this city;

On or about December 1, 1953, he was employed as attorney for the Receiver herein and has continued at all times to represent the Receiver;

The Receiver was removed from his active duties of management of the business and affairs of the former Richman Trust on February 28, 1954;

After the Receiver's removal on that date, Mr. Whyte prepared the Receiver's Report and Petition for Allowance of Fees, and in addition he per-

(Testimony of Hubert F. Laugharn.)

formed certain necessary services after February 28, 1954, in connection with the administration of the business and affairs of the former Richman Trust;

Assuming further that Mr. Whyte performed all or substantially all of the services specified in the Petition and Supplemental Petition for Allowance of Fees for Attorney to Receiver, exclusive of services necessarily rendered by him in defending the Receiver and his attorneys against objections filed by defendant Richman to the Report and Petition for Fees of the Receiver and his Attorneys, which said services were performed commencing on or about December 1, 1953, to and including May 10, 1954;

The time devoted by Mr. Whyte to the rendition of said services, excluding services rendered in defending the [356] Receiver and his attorneys against the objections raised by the defendant Richman to the Report and Petition for Fees of the Receiver and his attorneys, has been approximately 100 hours;

The assets of the former Richman Trust, which has been administered by the Receiver, have a fair market value of approximately One Million Two Hundred Thousand Dollars;

On the basis of these facts, what is your opinion as to the reasonable value of such services?

A. Well, in my mind I have divided the problem into two parts.

The first is the representation of the Receiver



(Testimony of Hubert F. Laugharn.)

during his administration and up and through the preparation of his Report and the presentation thereof in securing the discharge of the Receiver in the normal type of case. The period involved was approximately three months; a few days probably short of that.

Considering the size of the problem, the size of the case, the extent of the assets to be administered, the normal problems that were encountered, it would seem to me that a compensation of \$1,000.00 a month would not be excessive; considering all of those elements.

Now, the rest of the problem, including the objections to the Receiver's Report and the contended surcharges——

Q. May I interrupt, Mr. Laugharn, to ask whether I [357] might put a further hypothetical question to you on those services, and then let you answer that just as you see fit. A. Yes.

Q. Please assume the following further facts: After the Receiver was relieved of his active duties of management of the assets of the former Richman Trust on February 28, 1954, the defendant herein, Frederick I. Richman, filed written objections on or about April 7, 1954, to the Report and Petition of the Receiver and his attorneys for these:

Said objections contained charges that the Receiver had performed his services herein in a negligent and incompetent manner with reference to numerous matters;

(Testimony of Hubert F. Laugharn.)

It is further claimed in said objections that by reason of improper performance of his duties the Receiver should be surcharged in an amount of approximately Eight Thousand Dollars;

John Whyte, the attorney for the Receiver, has undertaken the latter's defense against each and all the charges against the Receiver specified in said objections.

In that connection Mr. Whyte has devoted between 16 and 17 hours prior to the commencement of this hearing to the defense of the Receiver against the charges made against him, as set forth in the objections filed herein by defendant Richman;

Such hearing has continued for from two to three full court days; [358]

On the basis of these facts, do you have an opinion as to the reasonable value of Mr. Whyte's services in defending the Receiver against the aforementioned objections filed to the Receiver's Report and Petition for a Fee herein?

A. Well, assuming the elements that you have given, some of which I am not familiar with, the preparation, but assuming that amount of work was necessary and assuming the disposition of the problem did require three court days before the court, it would seem to me that—and assuming a fair degree of success, although I don't know that that would be so terribly important in the attorney's time—I would say that that should involve

(Testimony of Hubert F. Laugharn.)

another amount of from \$350.00 to possibly \$550.00 or \$600.00.

Mr. Whyte: You may cross examine.

Cross Examination

Q. (By Mr. Enright): Mr. Laugharn, I would like to find out how you arrived at this \$350.00 to \$550.00. A. Well,—

Q. May I pursue my question?

A. How I arrived at it?

Q. May I pursue my question a little more?

A. I see.

Q. So I can point out my difficulty.

A. Excuse me. [359]

Q. As I recollect your answer, you said that there were about three days involved on the hearing and, secondly, I assume you took into consideration the statement by Mr. Whyte, in his question, there was surcharges of \$8,000.00. Is that right so far?

A. I took into consideration all of the elements that he requested me to take into consideration.

Q. And then you ascertained approximately three days and arrived at the conclusion of \$350.00 to \$550.00, is that it?

A. Yes, that was my general conclusion.

Q. So that would be at the rate, for three days at \$350.00, a little over a hundred?

A. I was figuring about four hours before the court a day on that basis.

Q. That would be 12 hours altogether for the

(Testimony of Hubert F. Laugharn.)

three days. Now, the thousand dollars a month, I take it you fix that based upon the fact there is \$1,200,000.00 worth of assets?

A. That is one of the elements that I had in mind.

Mr. Enright: I have no further questions.

Mr. Whyte: No further redirect.

The Witness: I know both of the gentlemen in this litigation, if the court please. I was asked to testify and felt it was my duty.

The Court: You don't need to explain. [360]

Mr. Whyte: May I ask one more question?

The Witness: Yes, sir.

#### Redirect Examination

Q. (By Mr. Whyte): Did I understand your answer to be that on the basis of three full court days devoted to this hearing, that you felt something from \$350.00 to \$550.00 was adequate compensation?

A. That is my opinion, yes, sir.

Q. What additional compensation, if any, do you think should be awarded for time of approximately 16 to 17 hours devoted prior to the hearing to the preparation of the case in defending the Receiver against those objections?

A. I included that period of preparation in my estimate.

Mr. Whyte: Thank you, sir.

Mr. Enright: It would be a total of 16 plus the 12 hours while in court, is that right?

(Testimony of Hubert F. Laugharn.)

The Witness: Yes, that was my theory.

Mr. Enright: 28 hours. That is all.

(Witness excused.) [361]

### JOHN WHYTE

called as a witness on behalf of the Receiver, having been previously duly sworn, resumed the stand and testified further as follows:

#### Cross Examination—(Continued)

Q. (By Mr. Enright): Now, Mr. Whyte, you did not advise Mr. Hallberg of the possibility of there being criminal citation issued in the event that smog contract was not performed?

A. No, I don't believe that I did.

Q. I got the impression that the sole reason for not filing the report was because of an order made by this court on January 29th, according to your January 29th notes, isn't that right?

A. I didn't mean to convey the impression that was the sole reason.

Q. As a matter of fact, you spent 1.1 hours on January 19th counseling with Mr. Harrison or somebody in an effort to prepare, commence to prepare the report, in accordance with the court's ruling?

A. What was that date again, Mr. Enright?

Q. January 19th.

A. Yes, I spent 1.1 hours—no. That is a mistake. My time slip for January 19th shows 1.1 hours preparing first report of Receiver and peti-



(Testimony of Maude Kennedy.)

Western Arms, Report from 10-30-1953 to 11-30-1953'', and I will ask you whether you can identify that document?

A. This is the monthly report.

Q. Monthly report of what, Mrs. Kennedy?

A. Of the rental.

Q. Are those reports kept in the regular course of business at the Western Arms Apartment House?

A. They are.

Q. Is that in your handwriting, Mrs. Kennedy?

A. This is.

Q. Those reports are made up at or about the same time as the transactions reflected thereon?

A. In this report, it is made at the end of the month off the ledger.

Q. In your capacity as the manager of the Western Arms, you kept these reports in your custody there at the [361-D] apartment?

A. I kept a copy of these. These were made in duplicate.

Mr. Whyte: I am going to offer this first series of white sheets, all of them being for the period of 10-30-53 to 11-30-53, in evidence as Receiver's Exhibit next in order.

The Court: Received.

The Clerk: Receiver's Exhibit 1.

(The documents referred to were marked Receiver's Exhibit 1 and were received in evidence.)











CASH and *Western* *Branch* REPORT from 10-30-53 10 to 11-30-53 19

(MONTHLY WEEKLY MONTHLY)

DATE	TENANT'S NAME	Acct. No.	Rental Date	RENTAL PERIOD		RENT	CASH RECEIVED		Amount Paid Due	Vacant Schedule	CASH REPORT	
				From	To and Incl		Remt	Miscellaneous			Total	Cash on Hand
	Bordino	310	6.50	11-28	12-28	6.50	100.00	106.50			Cash Received	\$
	Daniel	311	6.00	11-1	12-1	6.00					Cash	\$
	Williamson	312	6.50	11-1	12-1	6.50					Total	\$
	Mayer	314	6.00	11-1	12-1	6.00					PETTY CASH EXPENDITURES	
	Adorno	315	6.00	11-26	12-26	6.00						
	Bulgar	316	6.50	11-1	12-1	6.50					Item	Amount
	Burgh	317	6.00	11-19	12-19	6.00						
	Burgh	318	6.00	12-19	1-19	6.00						
	Legrand	319	6.00	11-13	12-13	6.00						
	Grubel	319	9.00	11-1	12-1	9.00						
	Marino	320	1.70	11-22	12-22	6.75						
	Marino	401	9.00	11-1	12-1	9.00						
	Goldino	402	8.50	11-7	12-7	8.50						
	Sehnert	403	6.50	11-9	12-9	6.50						
	Sehnert	404										
	Colbar	405	6.00	11-25	12-25							
	Marino	406	6.00	11-1	12-1	6.00						
	Marino	407	6.50	11-14	12-14	6.50						
	Marino	408	6.50	11-1	12-1	6.50						
	Marino	409	6.00	11-12	12-12	6.00						
	Marino	410	6.50	11-15	12-15	6.50						
	Marino	411	6.50	11-15	12-15	6.50						
	Marino	412	6.50	11-1	12-1	6.50						
	Marino	414	1.50	12-26	1-26	1.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						
	Marino	414	6.50	11-21	12-1	6.50						







(Testimony of Maude Kennedy.)

Q. (By Mr. Whyte): Directing your attention to Receiver's Exhibit 1, I am going to put some questions to you with regard to the number of vacancies at the Western Arms Apartment Hotel as of November 30, 1953.

First, calling your attention to Room 102, Apartment No. 102, are you able to state from this report whether or not that apartment was vacant as of the close of November 1953?

A. Vacant when?

Q. As of November 30, 1953.

A. Well, I wouldn't know without looking at my ledger.

Q. Well, there is a column on this report headed "Rental Period"? A. That is right.

Q. And underneath it is a column "From" and a second [361-E] column "To and incl."

A. That is right.

Q. In that rental period column for Apartment 102 the "From" is November 1, the "To and incl." is November 2.

What does that signify, Mrs. Kennedy?

A. This is right here, this is when it was rented (indicating).

Q. It was rented on November 1st?

A. That is right.

Q. What happened on November 2nd?

A. Well, that must be a mistake in there.

Q. Assuming——

A. She didn't give \$40.00 a day for it.



(Testimony of Maude Kennedy.)

Q. What does the notation in the column "To and incl." show?

A. Well, it shows 1 to 11-2.

Q. What does that mean?

A. That the apartment was rented from the 1st of November to the 2nd of November. From that you would think so.

Q. Now, if the apartment during the period of November was rented only from the 1st of November to the 2nd of November, was the apartment vacant on the 30th of November?

A. It must have been, if it is from the 1st.

Q. Next directing your attention to Apartment No. 104, [361-F] again looking at the column headed "Rental Period", from November 3rd—

A. 16.

Q. I beg your pardon. November 16, "To and incl." November 17.

A. Not including 17th. That was rented for one night, \$3.00.

Q. Was that the only time during the month of November when Apartment 104 was rented?

A. That is right.

Q. For one night?

A. That is right.

Q. Next directing your attention to Room 115, again the column "Rental Period", the sheet shows from 11-20 "To and incl." 11-28.

Does that correctly state the period during that month when the Apartment 115 was rented?

A. Rented for \$16.00 for the week. That is what it says.

(Testimony of Maude Kennedy.)

Q. And the rental period expired on November 28th, is that correct?      A. That is right.

Q. Next, calling your attention to Apartment 204, the column "Rental period", from November 14th "To and incl." November 21st. [361-G]

A. That wasn't including the 21st. That was to noon of the 21st.

Q. Does that period from November 14th to November 21st specify the only period during the month of November '53 when that apartment was rented?

A. Well, looking at your next month's sheet, you can find that out.

Q. I am speaking only of the month of November.

A. That is what it says, that is right.

Q. Next, Apartment 301—we will skip that.

Apartment 404, I notice that there is a blank in the column "Rental Period", both the "From" and "To and incl." What does that mean?

A. That means it wasn't rented.

Q. Thank you. I next direct your attention to a series of white sheets bearing the heading "Cash and Western Arms Report from 11-30-53 to 12-31-1953."

With reference to the manner in which those sheets were prepared, would your answers be the same as to these sheets, as to the previous sheets?

A. They certainly would.

Mr. Whyte: I offer as Receiver's Exhibit next

(Testimony of Maude Kennedy.)

in order this series of sheets showing the report from November 30, 1953, to December 31, 1953.

The Court: Admitted. [361-H]

The Clerk: Receiver's Exhibit 2.

(The documents referred to were marked Receiver's Exhibit 2 and were received in evidence.)











CASH and *Western Arms* REPORT from 11-30 1930 12-31 1930

DATE	TENANT'S NAME	Acct. No.	RENTAL PERIOD		Rent	CASH RECEIVED		Amount Rent Due	Recent Rent Received	CASH REPORT	
			From	To and Incl		Miscellaneous	Total			Cash on Hand	
2	<i>Schroeder</i>	308	6-5-00	12-25	1-25	5.65	5.65	5.65	5.65		
	<i>Schmidt</i>	309	6-0-00	12-1	1-1	6.00	6.00	6.00	6.00		
	<i>Bonaville</i>	310	6-5-00	12-25	1-25	6.50	6.50	6.50	6.50		
	<i>Warwick</i>	311	6-0-00	12-6	1-6	6.00	6.00	6.00	6.00		
	<i>Williamson</i>	312	6-5-00	12-1	1-1	6.50	6.50	6.50	6.50		
	<i>Mackrell</i>	314	6-5-00	12-1	1-1	6.50	6.50	6.50	6.50		
	<i>Spatorano</i>	315	6-0-00	12-26	12-27	3.00	3.00	3.00	3.00		
3	<i>Madala</i>	315	6-0-00	12-30	1-30	6.00	6.00	6.00	6.00		
	<i>Bullock</i>	316	6-5-00	12-1	1-1	6.50	6.50	6.50	6.50		
	<i>Fortune</i>	318	6-0-00	12-18	1-18	6.00	6.00	6.00	6.00		
	<i>Carley</i>	319	6-0-00	12-1	1-1	6.00	6.00	6.00	6.00		
	<i>Garthwaite</i>	320	6-7-50	12-23	1-23	67.50	67.50	67.50	67.50		
	<i>Dunbar</i>	317	6-0-00	12-19	1-19	6.00	6.00	6.00	6.00		
	<i>West</i>	401	9-0-00	12-1	1-1	9.00	9.00	9.00	9.00		
	<i>Coileas</i>	402	9-5-00	12-7	1-7	95.00	95.00	95.00	95.00		
	<i>Schurer</i>	403	6-5-00	12-9	1-9	65.00	65.00	65.00	65.00		
31		404									
	<i>Calbar</i>	405	6-0-00	11-25	12-25	60.00	60.00	60.00	60.00		
	<i>Coltas</i>	405	6-0-00	12-25	1-25	60.00	60.00	60.00	60.00		
	<i>Garod</i>	406	6-0-00	12-1	1-1	6.00	6.00	6.00	6.00		
	<i>Garod</i>	406	6-0-00	1-1	2-1	6.00	6.00	6.00	6.00		
	<i>Miner</i>	407	6-5-00	12-10	1-10	65.00	65.00	65.00	65.00		
	<i>Moody</i>	408	6-5-00	12-1	1-1	65.00	65.00	65.00	65.00		
	<i>Doner</i>	409	6-0-00	12-12	1-12	60.00	60.00	60.00	60.00		
	<i>Thacker</i>	410	6-5-00	12-13	1-13	65.00	65.00	65.00	65.00		
36	TOTALS					146.40	146.40	146.40	146.40		

Remarks and Requisition for Supplies









(Testimony of Maude Kennedy.)

Q. (By Mr. Whyte): Now, directing your attention to Receiver's Exhibit 2, I am going to put several questions to you with reference to the number of vacant apartments at the Western Arms as of the end of December 1953.

First, I call your attention to Apartment 204, and under the heading "Rental Period", from 12-12 "To and incl." 12-13,—

A. Rented one night for \$4.00.

Q. During the month of December?

A. That is right.

Q. Apartment 304, it shows in the "Rental Period" column, "From" 12-1 "To and incl." 12-15—

A. To 12-15.

Q. Excuse me. Does that correctly delineate the period during the month of December when that apartment was rented?      A. That is right.

Q. I will ask you to examine this sheet for December and see if you can tell me whether any other apartments during that month were vacant as of the end of the month.

A. As of the end of December?

Q. That is right.

A. 404 was vacant. [361-I]

Q. May I look at that with you, please?

A. Yes.

Q. 404, yes.

A. 304 was rented for two weeks.

Q. 304 is the one which you just mentioned in your previous testimony?

A. 304, it was rented for two weeks.

(Testimony of Maude Kennedy.)

Mr. Enright: I have it down as 404, and 301 and 204. This is 304, another apartment, now?

The Witness: No, 304; it was 304.

Mr. Whyte: The witness testified as to 204, 304, and 404.

The Witness: Testified as to what?

Q. (By Mr. Whyte): They were vacant as of the end of the month, is that right?

A. When? Where is it?

Q. Well, let's start again.

A. 204, right there it is (indicating). It was only rented one day.

Q. That is correct. A. One night.

Q. That is what you originally testified.

A. That is right.

Q. You so testified with respect to 304.

A. 304 was rented two weeks. [361-J]

Q. You testified with respect to 404?

A. That was vacant.

Q. Very well. Apart from those three individual apartments, are there any other apartments shown on that sheet which were vacant as of the end of December 1953?

Mr. Enright: Well, I will object. The record will speak for itself, as to what it shows.

The Court: Objection sustained.

Mr. Whyte: Thank you.

Mr. Enright: It also shows a vacancy there during the month, two weeks.

The Court: Before you go to another one, I will give counsel in this case their afternoon recess while

(Testimony of Maude Kennedy.)

we hear a motion which should take about ten minutes.

(Short recess taken.)

Q. (By Mr. Whyte): Mrs. Kennedy, I call your attention to four white sheets headed "Cash Report" or headed "Cash——"

A. Where is "Cash"?

Q. Here (indicating).                      A. Oh.

Q. ——"from January 1, 1954, to January 31, 1954," with the penciled notation "W.A.", and ask you if you identify that series of documents.

A. That is the monthly report.

Q. With respect to the makeup of that report, would [362] your answers be the same as to this, as they were to the November and December reports for 1953?

A. If the figures show the same, I would.

Q. The reports were prepared, this report was prepared in the same fashion as the December and November 1953 reports?                      A. That is right.

Mr. Whyte: Thank you.

I offer this as Receiver's Exhibit next in order.

The Court: Admitted.

The Clerk: It will be Receiver's Exhibit 3 in evidence.

(The document referred to was marked Receiver's Exhibit 3 and was received in evidence.)





# RECEIVER'S EXHIBIT No. 3

*John J. Deane*

*W. A.*

CASH and REPORT from 1-1-54 1-31 1954 1954

(DAILY, WEEKLY, MONTHLY)

DATE	TENANT'S NAME	Acct. No.	RENTAL PERIOD		CASH RECEIVED		Amount Paid Due	Vacant Rent Schedule	CASH REPORT	
			From	To and Incl	Base	Miscellaneous	Total		Cash on Hand	Cash Received
	<i>Applingstone</i>	101	1/8	2/8	90.00					
	<i>Bayley</i>	102	1/8	2/8	85.00					
	<i>Frank</i>	103	1/8	2/8	60.00					
	<i>Hoffman</i>	104	1/8	2/8	80.00					
	<i>Gray</i>	105	1/8	2/8	55.00					
	<i>Wardman</i>	106	1/8	2/8	55.00					
	<i>Miller</i>	107	1/8	2/8	65.00					
	<i>Marbore</i>	108	1/8	2/8	65.00					
	<i>Pyrie</i>	110	1/8	2/8	20.00					
	<i>Kennedy</i>	112	1/8	2/8	40.00					
	<i>Garkhan</i>	114	1/8	2/8	67.50					
	<i>Grison</i>	115	1/8	2/8	60.00					
	<i>White</i>	116	1/8	2/8	65.00					
	<i>Wadsworth</i>	117	1/8	2/8	80.00					
	<i>Wald</i>	118	1/8	2/8	70.00					
	<i>Seidler</i>	119	1/8	2/8	39.00					
	<i>Dawson</i>	119	1/8	2/8	67.50					
	<i>Penfrew</i>	120	1/8	2/8	67.50					
	<i>Peter</i>	201	1/8	2/8	90.00					
	<i>Wright</i>	202	1/8	2/8	85.00					
	<i>Knicker</i>	203	1/8	2/8	60.00					
	<i>Spidler</i>	204	1/8	2/8	82.00					
	<i>Gruber</i>	204	1/8	2/8	85.00					
	<i>Hopland</i>	205	1/8	2/8	60.00					
	TOTALS									

Receipts and Requisition for Supplies



CASH and REPORT from 1-1-54 1954

DATE	TENANT'S NAME	Age No.	Rent/ Rate	RENTAL PERIOD		CASH RECEIVED		Amount Rent Due	Visant Rent Schedule	CASH REPORT	
				From	To and Incl.	Rent	Miscellaneous	Total		Cash on Hand	
	Reynolds	206	55.00	1/28	2/2	50.00				Cash Received	\$
	Wagner	207	65.00	1/27	2/1	65.00				Total	\$
	Wagner	208	60.00	1/5	2/6	60.00					\$
	Winchester	209	65.00	1/28	2/28	65.00				PEITY CASH EXPENDITURES	
	Winters	210	65.00	1/3	2/2	32.50				Item	Amount
	C. Gorman	210	125.00	1/27	2/2	30.00					
	Hansen	210	77.50	1/31	2/2	17.50	2.00	20.00			
	W. Burke	211	60.00	1/1	2/1	60.00					
	W. Burke	212	65.00	1/25	2/25	65.00					
	W. Burke	214	65.00	1/1	2/1	65.00					
	W. Burke	215	65.00	1/4	2/4	65.00					
	W. Burke	216	65.00	1/24	2/24	65.00					
	W. Burke	217	80.00	2/1	2/1	80.00					
	W. Burke	218	60.00	1/1	2/1	60.00					
	W. Burke	219	90.00	1/1	2/1	90.00					
	W. Burke	220	67.50	1/1	2/1	67.50					
	W. Burke	301	90.00	1/27	2/27	90.00	100 - Long unit				
	W. Burke	302	85.00			120.00	(See Rent)	750.00			
	W. Burke	303	65.00	1/6	2/6	65.00					
	W. Burke	305	60.00	1/19	2/19	60.00					
	W. Burke	306	60.00	1/4	2/4	60.00					
	W. Burke	307	65.00	1/1	2/1	65.00					
	W. Burke	308	65.00	1/28	2/28	65.00					
	W. Burke	309	60.00	1/1	2/1	60.00					
	TOTALS	304	1			1	1	1	✓	Balance on Hand	\$
										Total Petty Cash Expenditures	\$
										Disputed Cash Hereafter	\$

To 1/1 25.00  
1/1 85.00  
2/1 85.00  
195.00  
25.00  
75.00

Receipts and Expenditures for Supplies

Receiver's Exhibit No. 3--(Continued)

Signed by



CASH and REPORT from 1-1-54 19 to 19 1954

DATE	TENANT'S NAME	Acct. No.	Rent Date	RENTAL PERIOD		CASH RECEIVED		Amount Per Schedule	Rent Schedule	CASH REPORT	
				From	To and Incl	Rent	Miscellaneous			Cash on Hand	
							Total			Cash Received	
	Bendigo	310	65.00	1/1	1/1	65.00					
	Smith	310	65.00	1/1	1/1	65.00					
	Wright	311	65.00	1/1	1/1	65.00					
	Wright	312	65.00	1/1	1/1	65.00					
	Wright	314	65.00	1/1	1/1	65.00					
	Wright	315	65.00	1/1	1/1	65.00					
	Wright	316	65.00	1/1	1/1	65.00					
	Wright	317	65.00	1/1	1/1	65.00					
	Wright	318	65.00	1/1	1/1	65.00					
	Wright	319	65.00	1/1	1/1	65.00					
	Wright	320	65.00	1/1	1/1	65.00					
	Wright	401	65.00	1/1	1/1	65.00					
	Wright	402	65.00	1/1	1/1	65.00					
	Wright	403	65.00	1/1	1/1	65.00					
	Wright	404	65.00	1/1	1/1	65.00					
	Wright	405	65.00	1/1	1/1	65.00					
	Wright	406	65.00	1/1	1/1	65.00					
	Wright	407	65.00	1/1	1/1	65.00					
	Wright	408	65.00	1/1	1/1	65.00					
	Wright	409	65.00	1/1	1/1	65.00					
	Wright	410	65.00	1/1	1/1	65.00					
	Wright	411	65.00	1/1	1/1	65.00					
	Wright	412	65.00	1/1	1/1	65.00					
	TOTALS	404									

Receipts and Requisitions for Supplies

Donner's Exhibit No. 3 - (Continued)

Signed by









(Testimony of Maude Kennedy.)

Q. (By Mr. Whyte): Again I am going to put several questions to you concerning which apartments were vacant as of the close of January 1954.

I direct your attention to Apartment No. 304 here——

A. No, it wasn't rented.

Q. That wasn't rented?

A. That is right.

Q. Fine.

A. Or it would have been on there.

Q. And Apartment 404, are you able to state whether that was rented as of the 31st of January, 1954?

A. That was rented for two nights.

Q. From when to when? [363]

A. 1-24 to 1-26.

Q. Will you examine this Exhibit 3 and tell me whether any other apartments were vacant as of January 31, 1954, besides Apartment No. 304 and Apartment No. 404?

A. 119 has—this lady didn't check in until the 23rd of January. 119 was vacant.

Q. Was 119 occupied as of January 31, 1954?

A. No,—yes. She came in there on the 23rd of January.

Q. And she remained through the 31st of January?

She is still there. But we always have better rentals in these three months.

Mr. Whyte: I am going to ask that the last answer be stricken as not responsive to the question.

(Testimony of Maude Kennedy.)

The Court: Well, it isn't responsive to the question, but it was a statement which could have been made in response to a question which could have been asked. We will let it stand.

Q. (By Mr. Whyte): Any other apartments here which you find to be vacant as of the end of January 1954? A. No; three of them.

Mr. Whyte: No further questions.

### Redirect Examination

Q. (By Mr. Enright): How many vacancies do you have now, Mrs. Kennedy? [364]

Mr. Whyte: Objected to as immaterial, not within the time of the receivership; has nothing to do with this case.

The Court: Overruled.

Mr. Whyte: And if she knows, no foundation is shown she is now the manager of this apartment. She is not testifying from any reports. She is testifying only from memory and no longer the manager.

The Court: Well, she was the manager up until the close of business on the 15th, as I understand it, and if the place just cleared out on the 15th it might be some evidence of the development of a bad condition there which, if it did go to that extreme, everyone moved, would create an inference there had been a bad period of management immediately preceding.

Your client hasn't been out of there very long. I think it is within the field of admissibility.



(Testimony of Maude Kennedy.)

Q. (By Mr. Enright): Tell me, did they relieve you yet as manager today?

A. No. They have had two managers. They didn't stay. I am still there packing.

Q. You are still there? A. Yes.

Q. Now, how many vacancies did they have there last week or as of Saturday night, or whatever date you want to select? [365]

A. Well, it was around 15. And I think maybe 17, but I don't want to say for sure.

Q. Did you ever have that many vacancies when Mr. Richman was managing that property?

A. No, never.

Q. Did you ever have that many while the Receiver was managing the property? A. No.

Mr. Whyte: Objected to as no sufficient foundation laid.

The Court: She has answered no. We will let it stand.

Mr. Whyte: Thank you.

Q. (By Mr. Enright): Now, it seems as though there is a little dispute here about whether you talked to Mr. Harrison at the time that refrigeration problem arose.

Mr. Whyte: Objected to as going beyond the recross examination; not within the scope of the recross.

The Court: We will allow it.

The Witness: Well, I called the office, but after thinking it over, after I left here, it was an error, because it was Miss Findeisen. And why I remem-

(Testimony of Maude Kennedy.)

bered it, because Miss Findeisen called me the afternoon after Mr. Hallberg had called me and talked to the Frigidaire man, and said that Mr. Hallberg was very pleased with the way that I had handled the situation. So it was Miss Findeisen and not Mr. Harrison. [366]

Mr. Enright: Those are all the questions I have.

Mr. Whyte: No further questions.

(Witness excused.)

Mr. Enright: May she be excused?

The Court: Yes.

Mr. Whyte: The Receiver and his attorney rest their case in chief, your Honor.

Mr. Enright: I will call Mr. Richman.

### FREDERICK I. RICHMAN

recalled as a witness on behalf of the defendants, having been previously duly sworn, was examined and testified further as follows:

Mr. Martin: May it please the court, may the record show I am appearing at this time in the case again?

The Court: Yes. You came at the beginning of today's proceedings, didn't you?

Mr. Martin: That is right.

The Court: Now, did the young man, who has been sitting here the last few days, represent your office?

Mr. Martin: That he did, your Honor. I thought in fairness to him, he was entitled to a little rest, so I relieved him. And I understood so many things

(Testimony of Frederick I. Richman.)

were happening here I felt it my bounden duty to attend.

Direct Examination

Q. (By Mr. Enright): Have you made a study of the records of the Richman Trust and of the Receiver, to ascertain the amount of rents received by the Trust for the four-month period, December 1, [367] 1952, through February 28, 1953, on the one hand, as compared with the four-month period, December 1, 1953, through February 28, 1954, on the other hand?

Mr. Whyte: May I have that question read? I believe you mean three months.

Mr. Enright: Three months.

(The record was read.)

Q. (By Mr. Enright): How did they compare?

Mr. Whyte: Well now, I will object to that, as no sufficient foundation has been laid for that. The books and records are the best evidence.

The Court: Sustained. You will have to lay a little more foundation for it. I think it is a proper bit of evidence and might be a very useful bit, but there should be a firmer foundation.

The Witness: May I get the ledger?

The Court: Certainly.

Q. (By Mr. Enright): Have you had any experience in keeping books and records, Mr. Richman?  
A. Yes.

Q. State what experience you have had?

A. I took accounting in college and I have been bookkeeping ever since.

(Testimony of Frederick I. Richman.)

Q. When did you graduate from college?

A. 1927, academic; law 1928. [368]

Q. Did you have anything to do with the books and records of the Richman Trust during the period from its formation, January 1, 1946, through December 1, 1953? A. I did.

Q. What did you have to do with them?

A. The books were set up under my direction and also Mr. Levering, a certified public accountant, and kept by my secretary, under my direction, for the entire period of time, up until November 30, 1953.

Q. You checked the books each and every month that you were agent for the Trust?

A. I did.

Q. Have you made an examination of the Receiver's books and records? A. I have.

Q. Are they here in the courtroom?

A. They are.

Q. By the way, does the Receiver keep a journal?

A. He certainly does. There is a journal in those books.

Q. And he has had that journal ever since January 1, 1954?

A. It shows that the journal was used to set up the Receiver's books as of January 1, 1954.

Q. Has it been posted up to date? [369]

A. Posted up to February 28, 1954.

Q. So the Receiver himself had a journal and

(Testimony of Frederick I. Richman.)

he was in error when he stated there was no journal, is that right?

Mr. Whyte: Objected to as leading and suggestive.

The Court: Sustained.

Q. (By Mr. Enright): What is the fact concerning the Receiver having a journal?

A. The Receiver's books have a journal. It would be impossible to keep a set of double entry books without a journal.

Mr. Whyte: I move the last——

The Court: Have you seen the Receiver's journal?

The Witness: I have.

Q. (By Mr. Enright): Is it here in the courtroom?      A. It is.

Q. Now, did you examine the books and records of the Receiver, to ascertain the answer to the question I have placed before you?

A. I took the figures off the Receiver's Petition for fees and Report to the Court.

Q. That is, his formal Petition he has filed here in court?      A. That is correct.

Q. State the results of your making this comparison for those three months' period, December 1, 1952, through February [370] 28, 1953, and December 1, 1953, through February 28, 1954.

Mr. Whyte: There is still no sufficient foundation laid. There is nothing to show what the books and records show for December 1, 1952, to February 28, 1953.



(Testimony of Frederick I. Richman.)

The Court: What about that?

Q. (By Mr. Enright): State what the nature of the books was that you kept.

A. The books are in the courtroom. A general ledger was kept under my supervision, while I had them. I have taken the figures out of the general ledger of the old books of the Richman Trust, which were brought here to the courtroom.

Q. Do the books reflect the gross rents, as received by each apartment house?

Mr. Whyte: I object to that. No sufficient foundation has been laid. The books are the best evidence of what they reflect.

The Court: The books are here, are they?

Mr. Enright: Yes, they are.

The Witness: Yes.

The Court: They may be marked for identification and will be available to Mr. Whyte for cross examination. They need not be introduced into evidence. We will hear the main questions asked upon the foundation of the books being here and their availability for use of the Receiver's attorney.

The Witness: The books disclosed that for the months of [371] December 1952 and January 1953 and February 1953 that the gross rentals from the five apartment buildings of Richman Trust amounted to \$97,404.58.

The Receiver's report, filed in this action, showing rents collected by the Receiver for the month of December 1953, and the months of January and

(Testimony of Frederick I. Richman.)

February 1954, show gross rentals from the five apartment buildings of \$93,776.24.

The Court: Mr. Richman, pardon the interruption. Are you going to provide me with a summary?

The Witness: I have no summary, your Honor. I got this at noontime.

The Court: I had better take it as you go along then. Give me that answer again.

The Witness: December 1952, January and February 1953, \$97,404.58.

December 1953, January and February 1954, \$93,776.24, to which should be added the sum of \$1,290.59, being February collections which should have been collected by the Receiver, but were not collected by him; were collected by the plaintiff, of \$1,290.59; making a total——

Mr. Whyte: That is objected to, that portion of the answer, as being a conclusion of the witness, whether they should have been collected by the Receiver.

The Court: Sustained. That is a conclusion of law, Mr. Richman. [372]

The Witness: Then the \$1,290.59 should be included in February rents, in order to arrive at a comparable figure to the ninety-seven thousand heretofore given.

Making a comparative figure of operations of the three months under the Receiver of \$95,066.83, or approximately \$2,400.00 less.

Q. (By Mr. Enright): Directing your attention to this \$1,290.59, did you examine the Receiv-

(Testimony of Frederick I. Richman.)

er's books and records to ascertain how much in rents was collected on February 26th, 27th and 28th?

A. The Receiver's books do not show any collections there, but the reports of the managers, which were part of the Receiver's records, shows the amounts that the managers collected and were holding themselves accountable for, for the month of February.

The Receiver's collection is \$1,290.59 less than the managers reported on the month-end reports, which were similar to the Exhibits 1, 2 and 3 of the Western Arms, Receiver's exhibits.

Q. So the Receiver's Petition, wherein he recites, on page 12, that he estimated there was \$2,000.00 of rents collected on those three days, February 26th, 27th and 28th, upon your checking the reports you found it to be \$1,290.59, is that right?

A. That is correct. [373]

Q. Now, directing your attention to your former contract with the Richman Trust, to pay you ten per cent fee, did you at the time that contract was made own half the assets that became a part of the Richman Trust? A. I did.

Q. What had been your business experience with reference to those assets and similar properties during the previous approximate 15 to 18 years?

A. I had been operating the assets at the time the assets went in the Richman Trust, under the name of Nagel-Richman, from the time that Nagel-Richman was created in 1936.

(Testimony of Frederick I. Richman.)

Also I have been general manager of an oil company and had my own oil production, had a general contractor's license, and had had an automobile dealership, and many other business ventures.

Q. You had had experience in this Los Angeles area before you became agent of this Trust, is that right?

A. Yes, I had run apartment buildings for some banks and trust companies here in Los Angeles.

Q. That was back how far?

A. That was about 1932, during the Depression. There was nothing to do, to run them then; merely to try to collect rents.

Q. Are you also a licensed attorney at law?

A. I am.

Q. And were at the time you entered into this contract for ten per cent?      A. I was.

Q. What was the approximate value of the assets that were transferred by you and the other trustor at the time the trust was created in November of 1945?

Mr. Whyte: I don't see the materiality of that question, your Honor.

The Court: It might be. On the chance it might be, we will let it in.

If it isn't, you can move to strike it out.

The Witness: My recollection is about \$375,000.00.

Q. (By Mr. Enright): What was the value of those assets as of the termination of the Trust, or when the Receiver took over, December 2, 1953?



(Testimony of Frederick I. Richman.)

A. \$1,200,000.00. You mean the net value of the assets?

Q. Yes. A. Yes.

Q. Now, did you pay the expenses of the managing of the properties out of your ten per cent fee?

A. I did. I furnished the office, telephone, all equipment, all stenographic and bookkeeping help, tax work, and paid the phone bill, paid the postage.

The Court: Did you pay the phone bills in each of the [375] apartment houses?

The Witness: No, the phone bills for the individual apartment houses were paid by the Trust. But for the general business of the Trust, which was conducted out of my office, I paid the phone bill. The Trust did not pay the phone in my office.

All ordering and conferences with suppliers and all business of the Trust was, except the actual housekeeping as would be taken up with the managers there, conducted from my office.

The Court: The managers were also paid by the Trust?

The Witness: That is correct.

The Court: What about Mr. Harrison?

The Witness: Mr. Harrison was paid by me entirely. He was never an employee of the Trust, or never was any other secretary of mine an employee of the Trust. I paid the Social Security, unemployment, compensation insurance on my secretary.

The Court: The books and records of the Trust were kept at your expense? You paid the entire cost for their keeping?



(Testimony of Frederick I. Richman.)

The Witness: I did.

The Court: Did you ever get any legal fees beyond the ten per cent contract fee for management?

The Witness: I did not.

The Court: Did you ever charge for any, whether you got [376] it or not?

The Witness: No.

The Court: Did you ever hire any outside lawyers to render legal services?

The Witness: On occasions I did.

The Court: In general, what was the character of work the attorneys did?

The Witness: During the regime of the Office of Price Administration, with rent control, in endeavoring to obtain more income from the Trust, which resulted in that very end, the Trust was sued by, I think it was, 27 tenants at the Fountain Manor. It was a rather long suit. With the consent of Mrs. Tidwell I hired outside attorneys to represent the Trust in that case.

Also there was one suit filed against the Trust for approximately eight or nine thousand dollars on purported rent overcharges. I hired an attorney on that matter.

As near as I can recall at this time, the amount of rent overcharges determined was \$110.00, I believe.

Q. (By Mr. Enright): In both instances that involved trial work?

A. Yes, that is correct.

(Testimony of Frederick I. Richman.)

Q. You rendered all legal services that were received by the Trust yourself, excepting trial?

A. Yes. [377]

Q. I guess there were some trials you took care of, Municipal Court trials?

A. Unlawful detainer actions, I would take care of all those matters, and things like that.

The Court: Did you have many of those?

The Witness: Had a lot of them.

Q. (By Mr. Enright): That was during rent control?

A. During rent control. Because you could get the courts to, if you could convince the court a tenant was undesirable, why, you would be able to retain a semblance of control over your buildings. And it was very desirable to prosecute those cases, in order to obtain control of your buildings.

Q. You made an examination of the records kept by the Receiver? A. I have.

Q. In making that examination, did you ascertain any expense or discover any expense to the Receiver himself, incurred as a result of his taking over and being Receiver in this matter?

A. I don't know of any. He used one of the apartments at the Oliver Cromwell, rent free, for an office. He used the telephone.

There is no evidence of any charges against the receivership for telephone charges, so I imagine they are all included [378] in the Oliver Cromwell bill. And I don't know of any——

He hired my secretary Harrison and drew checks

(Testimony of Frederick I. Richman.)

out of the Trust funds for payment of that salary. And paid the Social Security, unemployment and compensation on Harrison, and also on Findeisen out of the Trust bank account.

Q. Now, have you before you the Receiver's bank statements?           A. I have.

Q. Will you examine them and state as to what cash amount of money was on deposit as of 10-20 and the end of each month?

A. The receiver commenced with the bank account in the Union Bank and closed that bank account out about the 29th of January.

The Receiver also opened a bank account at the Citizens National Bank as of December 17th. And that account, according to these statements, is still open.

As of December 10th the statement shows on deposit in the Receiver's account—this is 1953—\$24,201.86.

Mr. Whyte: What date was that, Mr. Richman?

The Witness: December 10th. As of December 21, 1953, in the Union Bank \$24,462.09.

And as of December 22, 1953, in the Citizens Bank \$3,035.04.

As of the end of December, in the Union Bank \$3,374.67, [379] and in the Citizens Bank as of the end of December \$7,940.04.

As of January 11th, in the Union Bank \$1,275.17.

As of January 11, 1954, in the Citizens Bank \$26,552.83.

As of January 18th, in the Union Bank \$303.57.

(Testimony of Frederick I. Richman.)

As of January 20th, in the Citizens Bank \$22,-201.81.

As of the end of January, in the Union Bank \$250.00.

At the end of January, in the Citizens Bank \$21,-224.61.

As of February 10th, Union Bank, \$250.00. Citizens Bank, \$29,788.31.

As of February 20th, Union Bank account was closed by that time, and the Citizens Bank \$32,-626.26.

As of February 26th, 1954, in the Citizens Bank \$31,934.10.

Q. (By Mr. Enright): Based on your experience in operating these properties, the period 1945 through 1953, was there ample cash on deposit to operate with?

Mr. Whyte: Objected to as calling for a conclusion of the witness, your Honor.

The Court: Overruled.

The Witness: Outside of the occasion when the Villa Carlotta had been sold, I never had a bank account like that to operate the Trust with.

The Court: Was your second installment of taxes paid on any of these properties at the time the Receiver ended his duties?

The Witness: I paid the entire year installment of taxes [380] on two of the properties in November of 1953, before the Receiver took over.

None of the taxes on the five apartment buildings, which were due April 20th, in the amount of

(Testimony of Frederick I. Richman.)

about fourteen thousand dollars,—was what the second half of taxes were—had been paid, according to the records of the Receiver.

As of February 28, 1954, there would have been collections for March and 20 days' collections in April, which would have been added to the bank account, to pay the \$14,000.00 tax bill on April 20th.

Q. (By Mr. Enright): Now, directing your attention to the Oliver Cromwell payment, do you have a check there, Receiver's canceled check, I think, for about \$2,027.00, for the payment on the Oliver Cromwell due on March 1, 1954?

A. I have.

Q. Do you have checks immediately preceding and succeeding that check there before you?

A. You are talking about the March 1st payment?

Q. Have you the checks of the previous payments, too?

A. I have the checks here for January 1st, February 1st and March 1st payment on the Oliver Cromwell.

Q. When were they cleared?

A. The check No. 204 to Pacific Mortgage Corporation, dated December 31, 1953, for \$2,027.25, shows perforation through the check marked "Paid 1-18-54." [381]

The checks of the Receiver preceding, starting with Check 185, to Columbia Pest Control is dated December 31st, and shows as having been paid 1-20-54.



(Testimony of Frederick I. Richman.)

Check 186, to Few Electric, dated December 31st, shows as having been paid January 22, 1954.

The Court: Mr. Enright, I don't want to rush you, but just for information, how long is it going to take to present your side of this case?

Mr. Enright: Well, it is going to be awfully difficult to complete it this afternoon.

The Court: I don't expect you to. It would be practically impossible, since I am going away. But you have, in addition to needing the Receiver's case decided here, you have a dispute with Mr. Martin's client. I think they should be decided together. It might be there are offsets of the Receiver which, nonetheless, ought to be paid by Mrs. Tidwell. And these things I can't tell until we have all the evidence and possibly have had some briefing or research on it.

But I would like to finish them all in one more sitting, if we can. How long do you think it will take?

An awful lot of this, it would seem, could be agreed to. I don't mean agreed as to the result, but what the evidence is. It is simple to look at these bank statements and determine when payments were made and what the amounts were. And it seems to me that the dates on which some of these payments [382] were made might be controlling.

Mr. Martin: If it please your Honor, if you are including me in your remarks——

The Court: I was.

Mr. Martin: I gathered as much.—I might say

that Mr. Camusi will handle those details and he is more familiar with them than I. What his situation is I don't recall.

I understood that that particular phase of the problem had been put over to a day certain. What day certain that was I don't remember. It was to be dealt with at that time.

The Court: I don't even remember that it was a day certain. Was it, Mr. Clerk?

Mr. Martin: Mr. Camusi indicated to me there was. I might have a misapprehension on that, and to follow the decision of this, or, at least, the submission of this particular matter.

The record might be checked on that. I haven't followed those details in that sense.

The Court: I know we talked about a pretrial, as between your office and Mr. Enright's. It seems that the thing is simple enough and the pretrial ought to suffice for the trial, if we were to have the trial instead of the pretrial.

Mr. Martin: I wouldn't want to involve myself in any definite statement. Mr. Camusi would handle those details.

I know he came back to the office, after having been down [383] here, and told me, among other things, this other phase of the matter had been put over either for pretrial or some other purpose, to a later date. I think he so informed me a week or two ago; I don't remember just when.

The Court: I recall putting it over. My recollection is it went over indefinitely.

Mr. Martin: That could be.

The Clerk: June 18th.

The Court: I see it is June 18th, the clerk informs me. Would this be practical, Mr. Enright: You are not going to be here tomorrow?

Mr. Enright: No, I have made other arrangements, your Honor. I understood you were going to start your criminal matter in the morning.

The Court: I am. We can still work in some time, if we are going to be free. But how about taking this matter up again? Do you think we can conclude it on a Monday? You know how Mondays are interrupted here.

Mr. Enright: Yes.

The Court: If we could complete it on a Monday, we might take it up on June 1st, so far as the Hallberg-Whyte petitions are concerned. That will leave us until the 18th to begin consideration of the Tidwell and Richman phase of it.

Do you think that is practical, or is trying to do this sort of thing on a Monday too difficult? [384]

Mr. Enright: My belief is that we could, the defense could present their evidence, Mr. Richman's evidence, in approximately two to two and a half hours; not more than that.

The Court: Let's try.

Mr. Enright: But I do not want to misinform the court. I consider this contractual right between Lyda Tidwell and her brother Frederick Richman as being entirely different from the Receiver's problem. I agree with the court that maybe there is a matter of offset that could be charged off between

the two of them. They have a contract settling their rights, as to the balance of this fund.

The Court: Well, let's continue the proceeding, upon which we are now engaged, until Tuesday, June 1st, at 11:00 o'clock.

Mr. Enright: Tuesday?

The Court: Yes. May 31st is a holiday, so Tuesday, June 1st, at 11:00.

Mrr. Martin: At 11:00, sir?

The Court: Yes. That Tuesday will be our law and motion day, for that week, and I will be busy with short matters for an hour.

I am sorry to interrupt this just as you were getting well into this group of figures, but we have been in session, either in chambers or here, since about 9:00 this morning, and I want to close. [385]

We will stand adjourned.

(Whereupon, at 4:05 o'clock p.m., Monday, May 17, 1954, an adjournment was taken until Monday, June 7, 1954, at 11:00 o'clock a.m.)

\* \* \* \* \* [386]

Mr. Whyte: The court please, I should like to ask the court's indulgence to reopen the case in chief for the Receiver and his attorneys, and put on briefly a witness with respect to the reasonable value of the attorneys' fee in connection with the defense of the Receiver.

I was taken by surprise at the testimony of Mr. Laugharn which was given here at the last session to the effect that he considered \$550.00 to be a reasonable fee for the time which had been devoted by the attorney for the Receiver in preparing the

defense to the objections and participating in this hearing.

So with the court's permission, if it may be granted, please, I would like to call briefly Mr. Paul Fussell of the firm of O'Melveny & Myers, to testify with respect to the reasonable value of those fees.

The Court: Of course, the court can judge the value of attorneys' fee, even without any witness. I don't recall that you had any expert testimony on this field, apparently relying on the court's application of the pertinent rules, [388] and then Mr. Enright produced a witness.

Do you have any objection to our hearing from Mr. Fussell, Mr. Enright?

Mr. Enright: No.

The Court: All right. The motion is granted to reopen.

Mr. Whyte: Mr. Fussell, will you take the stand, please?

#### PAUL FUSSELL

called as a witness on behalf of the Receiver, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, sir?

The Witness: Paul Fussell.

#### Direct Examination

Q. (By Mr. Whyte): Are you an attorney, Mr. Fussell? A. Yes, I am.

Q. With whom are you associated?

A. I am associated with O'Melveny & Myers.



(Testimony of Paul Fussell.)

Q. For how long have you practiced law continuously in this State?

A. Since the early part of 1921; about 33 years.

Q. The firm of O'Melveny & Myers, how large a firm is that, sir?

A. Well, it is a firm of about 60 attorneys, including the partners and those who are associated with the firm. [389]

Q. Are you the senior partner of the corporation department of that firm?      A. Yes.

Q. Would you please tell the court what experience, if any, you have had with receiverships or trustees in possession of apartment houses and office buildings, properties of that type?

A. Well, I think that during the '30's in particular that I represented trustees in possession of approximately 30 buildings in Southern California, mostly in Los Angeles, some being office buildings, some hotels, and some apartment houses. I think the apartment houses were the most numerous of those three classes.

Q. Where were those apartment houses located, Mr. Fussell?

A. Well, the Los Angeles apartment houses were located largely in the western part of Los Angeles, or Hollywood, such apartment houses as the Arcady Apartment House, 2424 Wilshire Boulevard, and the Gaylord Apartment House, Cahuenga Halifax, an apartment house in Hollywood, the Seventh and Catalina Apartments.

(Testimony of Paul Fussell.)

Q. Mr. Fussell, I will ask you to please assume the following facts:

Assume that John Whyte, the attorney for the Receiver herein, has been engaged in the active practice of law in [390] Los Angeles, California, for a period of 12 to 13 years;

That the receivership in this matter continued for a period of three months, that is to say, from December 1, 1953, until February 28, 1954;

That following the expiration of the receivership the attorney, Mr. Whyte, prepared a report for the Receiver and petition for fees, as well as a petition for fees on his own behalf, as attorney for the Receiver;

Following the filing of those reports and petitions with the court there was filed herein by the defendant Frederick I. Richman objections to the report of the Receiver and his petition for fees, as well as objections to the petition for fees of the attorney, wherein an attempt was made to surcharge the Receiver for sums in excess of \$8,000.00 on account of his alleged mismanagement of the trust estate;

Further assume that the receivership assets consisted of principally five apartment buildings, whose value was in the neighborhood of a million and a half dollars;

And I shall further ask you to assume that in connection with the defense of the Receiver to the objections raised against his report, and petition for fees, the attorney, Mr. Whyte, devoted a total

(Testimony of Paul Fussell.)

of from 16 to 17 hours of his time in preparation for those hearings, in defending the Receiver;

That the hearings have already consumed approximately [391] four full court days, with the prospect of another court day before us, and possibly additional time.

Under those circumstances, and based upon those facts, do you have an opinion as to the reasonable value of the attorneys' fees in that connection?

Mr. Enright: To which objection is made upon the ground it misstates the facts of the record, that is, to wit, surcharge of \$8,000.00.

We object to the accounting and ask the plaintiff be charged with having received those moneys.

Secondly, we object upon the ground it misstates most of the facts of record, particularly, for example, it fails to state that the attorney in preparing the petition for the Receiver failed to comply with the court rules in setting forth the amount.

The Court: Mr. Fussell, bear in mind, in answering the question which is before you, that the surcharge is not intended to be applied to the Receiver, but rather to the successful litigant in the principal litigation.

Mr. Whyte: May I direct the court's attention to the objections for a moment in that connection?

The Court: Well, I think the objections as filed did undertake to apply the surcharge against the Receiver, but the statement counsel made in court as to what his objective is, or one of his objectives in the matter here is to have it [392] applied

(Testimony of Paul Fussell.)

against Mrs. Tidwell, who is not the receiver. Is that right?

Mr. Enright: Yes, your Honor.

The Court: So the Receiver came here upon pleadings which undertook to have him surcharged, but the theory of trial, which was announced rather early in the trial, is that the attempt to surcharge is not against the Receiver, Mr. Whyte's client, but against the prevailing litigant in Tidwell vs. Richman. Does that state it?

Mr. Whyte: Is that your position, Mr. Enright, that you are not now trying to surcharge the Receiver?

Mr. Enright: We surcharged that Receiver. We asked that it be a charge upon the funds in his hands. That is the way we pleaded it. That is the way we stated it in the inception. I am sure the Receiver understood it that way.

The Court: Well, I don't know whether he clearly understood it that way at the beginning, Mr. Enright, because I didn't. And while I have great respect for the Receiver's ability to read and understand, I doubt if, when the court understood originally you were trying to surcharge the man himself, he didn't draw the same conclusion; and apparently Mr. Whyte did.

But it became apparent in this trial settling the Receiver's fees that the attempt is to surcharge the fund, [393] or, as I stated originally, to surcharge Mrs. Tidwell instead of taking it out of the pocket of the Receiver.



(Testimony of Paul Fussell.)

Now, has it all been stated clearly?

Mr. Enright: I think so, your Honor. I would like to analyze the record.

Mr. Whyte: Then it is clear, Mr. Enright, that you were not attempting to surcharge the Receiver personally here.

Mr. Enright: I intend to and seek to charge the Receiver personally and submit that the charge should be against the fund.

The Court: Well, that means against the \$30,000.00 which he still has in his possession.

Mr. Enright: Could I have that read?

(The record was read.)

Mr. Enright: Certainly, your Honor. I stated that there is no need for this Receiver having to bring an action against the plaintiff to recover their money, that the plaintiff has received the benefits of and added to the fund; rather, charged to the plaintiff.

The Court: Now, Mr. Fussell, do you remember the question?

The Witness: I think the question is do I have an opinion under the state of facts as given by Mr. Whyte and as amplified by your Honor. And the answer to that question is I do have an opinion. [394]

Q. (By Mr. Whyte): What is your opinion, Mr. Fussell?

A. I think the reasonable value of the services, on the assumptions stated, would be between \$1,000.00 and \$1,200.00.



(Testimony of Paul Fussell.)

Mr. Whyte: You may cross-examine, Mr. Enright.

Cross Examination

Q. (By Mr. Enright): Would you assume, Mr. Fussell, for the purposes of the question of your opinion, that the attorney for the Receiver failed to advise the Receiver to collect \$785.00 of this fund, being three days' rents?

Mr. Whyte: Objected to as immaterial, your Honor?

The Court: Overruled.

The Witness: On that assumption, and assuming that it was negligence on the part of the attorney to fail to so advise, I would think there should be a modest diminution in what would otherwise be a reasonable fee.

The Court: You assumed, in answering the question, the attorney for the Receiver had fully and correctly discharged his duty in that capacity?

The Witness: In answer to the question on my principal examination?

The Court: Yes.

The Witness: I assume he had done so within the limits of a prudent practitioner at the bar, yes, sir. [395]

The Court: Thank you.

Q. (By Mr. Enright): Now, I stated that as \$785.00. I should have stated that as \$1,290.00 rents.

I now want to ask you another question. Instead of the \$1,290.00 rents, and in addition to that assume that the attorney failed to and did not advise

(Testimony of Paul Fussell.)

the Receiver to retain in his possession \$785.00 petty cash, which the order he, the attorney, received specifically directed the Receiver to retain that sum of money.

Mr. Whyte: Again I want to register an objection on immateriality. I want to point out the ground a little more specifically.

The questions asked of this witness were with reference to reasonable value of the attorney's services in defending the Receiver against the objections raised to his report and petition for fees.

The Court: Didn't the question go as to all the services rendered by the attorney in the administration of the receivership?

Mr. Whyte: No, it did not, your Honor. The question to Mr. Fussell went only with reference to work done defending the Receiver against the objections filed. The testimony in the record by Mr. Laugharn was that for the work—was the work of the attorney advising the Receiver during the period of receivership, that the sum of a thousand dollars per month [396] was a reasonable fee.

Now, the question being asked of this expert is simply with reference to the defense of the Receiver in this court proceeding and the preparation therefor. So that any questions with regard to how the attorney may have advised the Receiver during the pendency of the receivership has no pertinency whatever to the question which has been asked of this expert, as to whether or not the attorney is

(Testimony of Paul Fussell.)

entitled to so much for defending the Receiver against the objections to the report.

The Court: Objection overruled.

The Witness: May I have the question read?

(The question was read.)

The Witness: I think that would affect my answer, if two factors occur. First, if the failure stated on the part of the attorney was due to his negligence or a failure to observe the standards of professional ability, which are customary in these matters, and, secondly, if it caused loss.

Q. (By Mr. Enright): Thank you, Mr. Fussell.

Now, assume further that the attorney failed to advise and did not advise the Receiver that an order of the Los Angeles Smog Control Board, if not complied with by the Receiver, would subject the Receiver's agent, to wit, the manager of an apartment house and possibly other persons to criminal charges, to wit, a misdemeanor, and the attorney is [397] seeking extraordinary compensation for his services as attorney to the Receiver, to which petition for extraordinary services and objections were filed, and we are here trying the objections.

Would that failure to advise have any bearing upon your opinion as to whether he should be compensated for presenting, and, may it please, not defending his application for fees?

Mr. Whyte: For the record, the same objection. It is immaterial as to this witness, who has been asked merely as to the proper fee to be given,

(Testimony of Paul Fussell.)

awarded to the attorney for defending the Receiver against the objections filed to his report.

You can ask him with reference to anything the attorney may have done in connection with advising the Receiver during the pendency of the receivership.

The Court: Do I understand, Mr. Whyte, the full area of inquiry with this witness, so far as you are concerned, is the appearance here at the time of giving the accounting in open court?

Mr. Whyte: Exactly, your Honor. Just the appearance and the preparation for this hearing. That is all this witness was asked to testify to.

The Court: All right. The objection is sustained.

Mr. Enright: May I point out, your Honor, that if my question is directed to the proposition, we perhaps wouldn't [398] be here hearing these questions of fees had the attorney performed his duties.

The Court: That is a matter to go into in determining the amount of fees to be allowed for the principal services rendered.

Mr. Enright: I wish to make an offer of proof, that through this witness on the stand, he would testify that the failure of the attorney to perform this duty would affect his opinion as to the amount of fees he should receive, upon a hearing as to the amount of time taken to determine fees.

The Court: The question of principal litigation so far has been the services of the Receiver and the services of the attorney have been only, you might say, inferentially litigated here.



(Testimony of Paul Fussell.)

Apparently, it is Mr. Whyte's position that the court could determine the value of the services rendered by its own officer, and that some of the value of the services rendered at a trial can perhaps best be appraised by the trier of fact.

Mr. Enright: I appreciate that, your Honor. But we have a pyramiding. First he asks for \$3,000.00 plus extraordinary fees. And then he asks to be compensated for the time to hear whether or not \$3,000.00 plus extraordinary is reasonable.

Mr. Whyte: You are mistaken. I am not asking for any compensation for the time I have had to spend up here in [399] defending my own fees. I am asking Mr. Fussell for his opinion as to my compensation for defending my client, the Receiver, who was appointed as an officer of this court and whose report is under attack. That is what I am asking for compensation for.

The Court: That is what I understood when I sustained your objection.

Q. (By Mr. Enright): Now, Mr. Fussell, assume that the attorney for the Receiver failed to allege in the petition what fees the Receiver sought for his services, in violation of the rules of this court, to specify the amount of fees the Receiver sought for his services. Would that affect your opinion?

The Court: I will have to take the responsibility for that, Mr. Enright. Mr. Whyte called me and said, "We are having a little trouble drawing this



(Testimony of Paul Fussell.)

report," and he asked whether he had to specify or whether to leave it to the discretion of the court.

I felt at the time—perhaps not having had that rule driven too much home in my consideration—that asking for reasonable fees and leaving it to the court to determine what they should be upon hearing the evidence was the better practice. And rightly or wrongly, I told him I would accept the report in that form.

So I think if a lawyer goes to the judge for consent in [400] a matter, and the court gives it, that is not malpractice.

Mr. Enright: I did not so consider it to be malpractice. I did consider it to be——

The Court: It is not deviation from the reasonable prudent representation of your client.

Mr. Enright: I desire to offer evidence that it is in variance from reasonable prudent presentation. That was the purpose of my inquiry.

The attorney had failed to use reasonable prudence in presenting the petition. He should have advised the court of the rule and the reason of the rule, and the research there available so the court could have been informed when it made its order.

The Court: Well, perhaps I should have kept my eye on the appellate court as well as on this court.

Mr. Enright: Well, I don't know what the appellate has to do with this case. Is that a ruling? May I construe that as a ruling that the question is improper?

The Court: Well, we will allow the question.

(Testimony of Paul Fussell.)

The Witness: As I understand the question, my answer would be, in light of the additional circumstances stated by the judge, I should not deem the failure to specify an amount in the petition to be a reason to affect the amount which I stated in my principal answer.

Q. (By Mr. Enright): Now, will you further assume, for [401] the purpose of your answer just given, that Mr. Whyte, the attorney, failed to communicate with the attorney for the defendant when taking that matter up with the court.

Do you consider that should be considered, and would that affect your judgment as to his fees?

A. That would not, sir, no.

Q. It would not?                      A. No.

Q. Now, in addition to the \$785.00 and \$1,290.00, there was a third item of two thousand approximately twenty-nine dollars.

Will you assume that the \$2,029.00 was evidenced by a check drawn on the 27th of February, one day after the attorney for the Receiver had received a copy of the order of the court dated February 26th, and that the \$2,029.00 was not received by the payee until after March 1st, and that the payment of the \$2,029.00 by the Receiver was contrary to the order of the court on February 26, 1954;

And further assume that the attorney failed and neglected to advise his client, the Receiver, or in any other respect concerning that amount. Would that affect your opinion?

(Testimony of Paul Fussell.)

Mr. Whyte: Again may I enter an objection to the question. It calls for evidence which is immaterial, calling for evidence with reference to whether or not the attorney performed his duties in connection with advising the Receiver [402] during the pendency of the receivership.

As to the reasonable value of his fee, in that connection it might have some pertinency. Where this witness' testimony is limited to the reasonable value of the attorney's services in defending the Receiver against the objections filed to his report, I submit it is not material.

The Court: Sustained.

Mr. Enright: I offer to prove through this witness that the circumstances as stated in the question would affect and decrease the amount of the moneys payable.

Q. (By Mr. Enright): Will you further assume a fourth item, that in addition to the \$785.00 and the \$1,290.00 and \$2,029.00, the \$3,000.00, a claim for services rendered before the Receiver was appointed, which claim the Receiver states in his accounting as being an account payable, but which the Receiver did not pay, and which \$3,000.00 plus the \$2,000.00, making five plus the \$1,290.00, making \$6,290.00, plus the \$785.00, constituting less than \$7,000.00 is the so-called \$8,000.00 for which the attorney says he is defending the Receiver, would the fact that that \$3,000.00 listed as a payable in his accounting in any manner affect your opinion on an \$8,000.00 so-called objections?

(Testimony of Paul Fussell.)

Mr. Whyte: Objected to again as immaterial. The question is highly uncertain.

The Court: Sustained. [403]

Mr. Enright: May I point out, your Honor, that they claim—the question asked of this witness was that he is defending a Receiver against a surcharge of \$8,000.00. He gave an opinion here it is worth \$1,000.00. There is no surcharge involved in that \$3,000.00. They acknowledged it as an account payable.

The Court: What it comes down to is this man is asked his opinion of the value of time spent in drawing a pleading and trying a case. Every case has its merits and every case has its demerits. Whether there can be any allowance for it or not might depend on circumstances outside of the direct testimony of this witness. But we have to limit cross examination to the question inquired into upon direct.

We also have to apply an inquiry as to relevancy as to all testimony in the case after it is submitted, regardless of what the ruling might be at the time that testimony is offered.

Q. (By Mr. Enright): Mr. Fussell, would your opinion of the thousand dollars be in any manner affected if you were to assume that over half of this time in court—I don't know how many of those 16, 18 hours' preparation—have involved the failure of the Receiver to retain control of the \$785.00 or to collect the \$1,290.00?

(Testimony of Paul Fussell.)

A. No, I don't think it would be affected by any failure on the part of the Receiver in those respects. [404]

Q. You feel the attorney was entitled to a thousand dollars, is that it, for——

A. Yes, on the assumption that I am making, that the proceeding is being conducted in good faith; I feel that he is entitled to be paid for his time, yes, sir.

Mr. Enright: I have no further questions.

Mr. Whyte: I have just one question.

#### Redirect Examination

Q. (By Mr. Whyte): Did I understand your testimony to be, Mr. Fussell, that you prescribed a range of from a thousand to twelve hundred dollars for the services specified?

A. That is correct.

Mr. Whyte: I have no further questions.

(Witness excused.)

The Court: Was that the extent to which you wished to reopen your case?

Mr. Whyte: That is right.

The Court: Do you want to begin now, Mr. Enright?

Mr. Enright: Yes, I will do my best. I will call Mr. Richman, your Honor, back again. [405]



FREDERICK I. RICHMAN

recalled as a witness on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Enright): At our adjournment, Mr. Richman, I believe we were covering the subject matter of this two thousand dollars plus, the Oliver Cromwell payment.

Do you have before you the checks evidencing the payment on the previous months and on the month of March 1954? A. I have.

Q. Will you state from the checks when those payments were made the previous months?

A. Check No. 204, dated December 31, 1953, payable to Pacific Mortgage Corporation for \$2,-027.25, marked in the voucher part of the check "1-1-54 payment, MB 302912." And it bears perforations of having been paid by the bank of 1-18-54.

The part in the voucher part of "MB 302912" was the [406] number of the Oliver Cromwell loan with the Pacific Mortgage Company. The checks——

The Court: May I have the amount of that check again?

The Witness: \$2,027.25.

Mr. Whyte: And the date, Mr. Richman?

The Witness: The date was December 31, 1953. That is the date of the check. The perforation is 1-18-54.

The checks prior thereto, with the group I have

(Testimony of Frederick I. Richman.)

here, are commencing with Check No. 185, to Columbia Pest Control, dated December 31, and cleared the bank on 1-20-54.

Check No. 186, dated December 31st, cleared the bank 1-22-54.

Check No. 187, dated December 31, 1953, cleared the bank 1-21-54.

Check No. 191, dated December 31, '53, cleared the bank 1-22-54.

Check No. 192, dated December 31, '53, cleared the bank 1-22-54.

Check No. 194, dated December 31, 1953, cleared the bank 1-20-54.

The balance of the checks proceed through there, and they were all dated December 31st, but did not clear the bank until around the 20th of January.

And the check to Pacific Mortgage, being Check No. 204, was written after the December 31, 1953 payroll checks had [407] been written.

In regard to the February 1, 1954 payment, Check No. 314, dated January 30, 1954, to Pacific Mortgage Corporation, \$2,027.25, marked in the voucher part "2-1-54 payment," is perforated by the bank as having cleared it on 2-9-54. That check was written after the payroll checks of January 31st period, 1954.

The checks just prior thereto and just following show payments from clearance at the bank of around 2-9 and 2-10-54.

Check No. 433, payable to the Pacific Mortgage Company for \$2,027.25.

(Testimony of Frederick I. Richman.)

Q. (By Mr. Enright): Now, this is the one involved, isn't it?

A. Yes. The check is dated February 27, '54. It is marked on the voucher part "3-1-54 payment."

It shows perforation from the bank, as having cleared the bank on 3-4-54; the 27th of February was a Saturday and was probably mailed out and received by Pacific Mortgage on the 2nd and deposited in their bank, and by the time it came back to the branch of the Citizens Bank at 3rd and Western, through the clearing house, it would be marked "Fourth, '54."

That Check 433 was written before the payroll of February 28, 1954. The checkbook shows in the stub part, commencing with Check No. 425, the stub was dated February 28th.

426 is dated February 26th; 427 check number has no date; [408] 428 check number, dated 2-26; 429 number was dated 2-28; 431 check number was dated 2-26; 432 check number was dated 2-26; 433 check number was dated 2-27. That 433 is the one in question, Pacific Mortgage Corporation. The stub part of the checkbook shows payment of 3-1-54, \$2,027.25.

Check No. 434 is dated 2-27-54. And then commencing with Check No. 435, it appears to be the payroll for the last half of February, and those are dated 2-28-54.

The previous checks, the payroll was all written before the Pacific Mortgage check. And this is the only one where the payroll for the——

(Testimony of Frederick I. Richman.)

Mr. Whyte: That is all moved to be stricken as not responsive to the question, pure conclusion of the witness.

The Witness: The checks are here for your examination, to see whether the payroll numbered check and the others fit in, Mr. Whyte.

The Court: The motion will be denied. The court will have to look to the exhibits, of course.

I don't think, in this sort of thing, we can cut the verbal testimony too close to the line or hold it too close to the line of technical admissibility, because insofar as it gives figures and dates and amounts, it has to be verified from the documentary evidence, which, of course, is controlling, and its reference to those dates and amounts and so on is largely to direct the court's attention to other testimony [409] which the witness usually gives, which bears upon the legal issues, rather than the purely factual.

Hence, I don't mean to hold that a particular thing will be or will not be considered material or relevant, when it comes to submission of the case upon the merits, and I am letting certain testimony in which might be objectionable if we were going to look to it instead of to the checks, because it tends to orient the other oral testimony.

The Witness: May I ask your Honor, do you wish these checks to be put into evidence? I have read all the information I gave from these checks.

The Court: I think they should be. Either the

(Testimony of Frederick I. Richman.)

checks should be or some memorandum. Possibly we can get it from the accounting, I don't know.

Just so we can go to some paper source and do our computing from that.

The Witness: Well then, that would be—you wish in evidence Check No. 204 and these others?

The Court: Either the checks or some report. I have seen reference to these in something, and I don't know if it was an affidavit or if it was the Receiver's report, or what.

But it should be before the court in its documentary form or by way of an admission.

Mr. Enright: I will offer in evidence these checks the witness has just read from. [410]

The Court: Received.

The Clerk: Defendants' D.

(The documents referred to were marked Defendants' Exhibit D and were received in evidence.)

Q. (By Mr. Enright): The amounts of \$2,027.25, evidenced by the February 27, 1954 check, was in payment of the March 1st installment on the Oliver Cromwell loan, is that correct?

A. Yes. It so shows in the stub of the check-book and on the voucher part of the check, and according to the books, it was the payment that was not due until March 1, 1954. The previous payments had been made.

Q. Now, I want to direct your attention to the Oxy-Aire contract. Did you have a conversation with Messrs. Hallberg and Whyte at your office,



(Testimony of Frederick I. Richman.)

during the period sometime December 1st to December 4, 1953?      A. Yes, I did.

The Court: Mr. Enright, I would rather like to get this Oxy-Aire matter in one sitting, so we might prudently adjourn now until this afternoon. Would you say 1:45 would be convenient?

Mr. Enright: Yes.

The Court: 1:45.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:45 o'clock p.m. of the same day.) [411]

Los Angeles, Monday, June 7, 1954, 1:45 p.m.

The Court: Proceed.

### FREDERICK I. RICHMAN

recalled as a witness on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

#### Direct Examination—(Continued)

Q. (By Mr. Enright): I believe, Mr. Richman, you had stated you had had a conversation with Mr. Hallberg and Mr. Whyte during the period December 1st to December 4th. Now, do you have a means of ascertaining what day it was you had that conversation?

Q. Yes. The conversation took place December 3rd.

Q. At that time was the subject matter of the Oxy-Aire contacts discussed?      A. It was.

(Testimony of Frederick I. Richman.)

Q. What was said?

A. On that occasion it was the first time that the Receiver and Mr. Whyte had come in to my office since the appointment. I was going over the current files with them at the time.

I showed them the current file on the smog question at the Oliver Cromwell and at the Canterbury. And I informed them that the trust had received a notice to apply for a permit; [412] that we had applied for a permit. And it had been denied on the grounds the incinerator, as it existed at that time, could not continue without some corrections, and that I had entered into a contract with Oxy-Aire—it wasn't called Oxy-Aire at that time—to put in a catalytic agency and the application, together with the plans, had been filed, but as yet I had not received back the approval on it. There wasn't anything to do on that matter until the approval came back from the Air Pollution Control District.

Q. Did you later receive a document designated "Approval" or "Approved"?

A. I received back the application with the plans marked, "Approved," on them on December 7, 1953.

I immediately put the documents into another envelope and mailed them to Roy E. Hallberg, 418 South Normandie, Los Angeles 5. He had taken an apartment in the Oliver Cromwell to conduct the affairs of the receivership.

(Testimony of Frederick I. Richman.)

Q. When was the next time you heard any more or anything concerning this Oxy-Aire contract?

A. About the middle of the month Mr. Manalis of the Oxy-Aire Company called me and wanted to know if I had gotten the application back.

Mr. Whyte: Objected to as hearsay, your Honor.

Q. (By Mr. Enright): You received a telephone call about the middle of what month? [413]

A. December.

Q. Do not state what the substance of the phone call was.

The Court: The exact conversation goes out. The fact a call was made, the fact of the call remains.

Q. (By Mr. Enright): After receiving this call about the middle of December 1953, what did you next do? A. I did nothing.

Q. When was the next time that you heard anything concerning the Oxy-Aire contract?

A. January 29, 1954.

Q. And what occurred at that time?

A. I had left my office and gone home. My secretary called me and said Mr. Whyte had been trying to get in touch with me.

Q. Then what did you do?

A. I tried to contact Mr.—my secretary gave me the message that Mr. Whyte had left there, that there was a criminal complaint to be heard February 1st in Lincoln Heights Jail and I was named as one of the defendants.

I immediately tried to get in touch with Mr. Hallberg both at the Oliver Cromwell and at Cor-

(Testimony of Frederick I. Richman.)

ona del Mar, but was unsuccessful in reaching him at either place.

Q. January 29th was a Friday, is that correct?

A. That is correct. [414]

Q. Did you appear in criminal court on February 1st? A. I did.

Q. Who was present at that time concerning this matter?

A. Mr. Whyte was present, you were present, I was present; that is all—the judge.

Q. Was the manager of one of the houses there, too, also?

A. No, the manager was not there.

Q. What occurred in connection with this Oxy-Aire contract at that time?

A. I was charged with a criminal violation of the Public Health and Safety Code and was released on my own recognizance.

Q. What services did Mr. Whyte render, that you observed, at that time?

A. None that I know of.

Q. Was there a statement made in your behalf in the presence of Mr. Whyte?

A. There was a statement made by Mr. Enright, my attorney, in the presence of Mr. Whyte, to the judge to the effect I no longer had anything to do with the properties and that it was a matter between the Receiver and the Smog Control District.

Q. Have you since that time examined the Oxy-Aire contract file? [415] A. I have.

(Testimony of Frederick I. Richman.)

Q. Did you find in it a letter prepared or purporting to be prepared by Mr. Hallberg?

A. I have the letter here.

Q. I direct your attention to a letter dated January 22, 1954, and particularly to that portion of it pertaining to drawings, or approved plans. Do you find that in there? A. I do.

Q. Now, when examining the Oxy-Aire file, did you ascertain what occurred with reference to those drawings?

A. Not from the file. I ascertained it with my conversation with Mr. Harrison on January 30th, what had happened to it.

Q. Mr. Harrison, that is the bookkeeper and agent of the Receiver? A. That is correct.

Q. State what was stated, said by the agent, Mr. Harrison, concerning the Oxy-Aire contract file.

Mr. Whyte: Objected to as calling for hearsay evidence, your Honor, and being offered as evidence of the truth of the fact which he is attempting to elicit from this witness.

The Court: What about it, Mr. Enright?

Mr. Enright: Mr. Harrison is the agent and employee of the Receiver. It is not hearsay, what his agent and the Receiver did. [416]

Mr. Whyte: He is not a party to this proceeding.

The Court: Overruled.

The Witness: After January 29th, when I couldn't get in touch with Mr. Hallberg or Mr. Whye, I contacted Mr. Harrison and on that day I went out to his apartment with Mr. Enright, to



(Testimony of Frederick I. Richman.)

find out what the situation was relative to the criminal complaint that I was supposed to be in Lincoln Heights Jail on February 1st for.

The Court: Do you mean in jail?

The Witness: That is where I was told to be, at Lincoln Heights Jail.

The Court: You weren't actually told to be in jail, were you?

The Witness: Yes; Lincoln Heights Jail.

The Court: Weren't you directed to the Department of the Municipal Court that meets in the jail building?

The Witness: That is where it turned out to be over there.

The Court: It wasn't in a cell, was it?

The Witness: No.

The Court: Throughout the hearing people have referred to going to Lincoln Heights Jail. From the other evidence on the matter it has seemed to me they were merely cited to the court which convenes in the building where the jail is located. [417]

You don't consider that you come to jail when you come up here, and yet the Marshal has detention rooms in this building, and people are under detention there right now.

Q. (By Mr. Enright): Did you ever appear in any court upon a criminal charge of any kind, other than this one?      A. Myself as the defendant?

Q. Yes.      A. No.

Q. Now, directing your attention to the conversation with Mr. Harrison concerning this subject

(Testimony of Frederick I. Richman.)

matter of the drawings on the Oxy-Aire contract and its approval by the Board——

A. I asked Mr. Harrison what it was all about. Mr. Harrison stated he had just heard that afternoon of the criminal complaint and Mrs. McConnell, the manager at the Oliver Cromwell, also was named as a defendant.

I asked Harrison what happened, as I thought everything was taken care of. I told Harrison I mailed the application, approved, and drawings that had been approved by the Smog District to Mr. Hallberg.

Mr. Harrison said that Mr. Hallberg had received them, that he had discussed the matter of the contracts with Mr. Whyte and Mr. Whyte had advised Mr. Hallberg he was not bound by those contracts.

Mr. Harrison told me that Mr. Hallberg directed him to call Oxy-Aire and tell them to do nothing on the matter. [418]

Mr. Harrison stated that just about that time Mr. Manalis called him and wanted to know where the plans were, and Harrison stated that he told Mr. Manalis that the Receiver was not bound by the contract and just to hold up everything.

Subsequently, Mr. Harrison stated on about the middle of January a citation had been received for violation at the Oliver Cromwell. Upon receipt of that violation Mr. Hallberg had directed him, Mr. Harrison, to call Oxy-Aire and have them proceed with the work.

Mr. Harrison stated that he called Manalis and

(Testimony of Frederick I. Richman.)

told him to proceed, and Mr. Manalis said he did not have the plans and specifications.

That occurred along about the 13th of January, as near as Mr. Harrison could recollect. And Mr. Harrison stated that he looked in the office for the approved plans and application from the Smog District, but could not find them.

And the next time he was able to get in touch with Mr. Hallberg was when he came to the office of the Receiver at the Oliver Cromwell on January 22nd. Mr. Hallberg went through his briefcase and found the application and approved plans.

That Mr. Hallberg then dictated the letter for Mr. Harrison to send to the Air Pollution Control, Inc., which Mr. Hallberg signed, enclosing the plans and specifications [419] and the approval of the application to Air Pollution Control, Inc.

That Mr. Harrison stated that Mr. Hallberg also told him to call them and get them on the phone in a hurry.

Mr. Harrison stated that Air Pollution Control, Inc. stated that there was a shortage of a certain material at that time, and they didn't quite know when they could get on the job. But they would get onto it as quickly as they could.

Mr. Harrison stated that the next thing he knew about it was the filing of the criminal action, and Mrs. McConnell, the manager at the Oliver Cromwell, was all upset about the matter.

Mr. Whyte: I am going to move to strike all that testimony again as hearsay on several grounds.

(Testimony of Frederick I. Richman.)

To begin with, the testimony of an agent is not binding upon his principal unless it is made during the course of his employment.

There is no showing here that any conversations that Mr. Harrison had with Mr. Richman, in direct violation of the order appointing the Receiver, which states in so many words that the plaintiff Lyda Tidwell and the defendant, and so forth, are restrained from disturbing possession of the Receiver or in any manner molesting the Receiver or interfering directly or indirectly with the administration of the receivership. [420]

There was no authority, no authority in Mr. Richman to talk with any agent of the Receiver or to discuss the matter with the Receiver, without the permission of his attorney or without the permission of this court.

The Court: Don't you think he could call and ask for information?

Mr. Whyte: I beg your pardon?

The Court: Don't you think he could properly call and ask for information?

Mr. Whyte: Surely, but to go behind the Receiver's back, as Mr. Richman did in this instance, to go out and talk to his agent behind his back, to spy upon his operations without his knowledge, seems to me that those statements are clearly outside the scope of the agent's authority.

The Witness: Mr. Whyte, I resent that. I tried to get——

The Court: Just a minute, Mr. Richman.

(Testimony of Frederick I. Richman.)

The Witness: I tried to get hold of the Receiver.

Q. (By Mr. Enright): Mr. Richman.

A. And he wasn't available. I have never been charged with a crime before in my life.

Mr. Enright: I know that this is——

The Witness: Talking about my going behind somebody's back——

The Court: If you will just restrain yourself, the court will protect you. [421]

Mr. Whyte: Mr. Harrison is not here. He is not subject to any cross examination by me as to these wild statements that have been made.

Now, I submit again that is purely hearsay testimony.

The Court: I don't think going to Mr. Harrison, under the circumstances, was out of order. You have the circumstance that a man has been cited for violation of a criminal law. He tries to get in touch with the Receiver. He tries to get in touch with the Receiver's attorney. He is unable to do so.

The transaction to be litigated grows out of the property, the management of the property in which the man has an interest. He is a defendant or prospective defendant in a criminal prosecution.

Doesn't he have a right to seek such information as he can and is not harassing Mr. Hallberg's agent at that time?

Mr. Whyte: Mr. Harrison was Mr. Hallberg's bookkeeper at that time, but the statements which he made to Mr. Richman, that have been testified



(Testimony of Frederick I. Richman.)

to here, are certainly not within the scope of his employment by—he is not being paid by Mr. Hallberg to go around, telling third persons about how this thing is being operated.

Mr. Richman didn't go to him and ask when the criminal citation was coming up, or, "What time am I to appear in court," or about matters which were germane to the criminal [422] matter, which was to come along on the following Monday morning.

Mr. Richman has been testifying here as to what went on in the past in the operation of the receivership in a private office out there.

Again I submit it is not within the scope of an agent's authority, to discuss those matters with outsiders.

The Court: I think legally it either isn't or we would be cutting it awfully fine, and I don't want to cut it awfully fine.

Of course, you should bear in mind that a court can size up the situation, sitting in an impartial position as the court does, and I think there is being entirely too much emphasis placed upon this Smog Control violation. Not that smog control isn't important and that something should have been done to prevent this occurrence. But I don't think it is the controlling thing in the evidence here.

Mr. Enright: In view of the objection, I would like to offer in evidence Mr. Hallberg's letter of January 22nd.

The Court: Received.

(Testimony of Frederick I. Richman.)

The Clerk: Defendants' E in evidence.

(The document referred to was marked Defendants' Exhibit E and was received in evidence.)

## DEFENDANTS' EXHIBIT E

Air Pollution Control, Inc. Jan. 22, 1954  
357 North La Brea Avenue  
Los Angeles 36, California  
Attention: Mr. B. Manalis

Gentlemen:

This letter will confirm Mr. Harrison's telephone conversation with you on January 15th giving you my instructions to proceed with the construction and installation of your Oxyaire Catalyst proposed for the incinerator at the Oliver Cromwell Apartment Hotel, 418 South Normandie Avenue, Los Angeles.

As you request, I am attaching the plans which you submitted to the Air Pollution Control District and which now carry their approval for construction. The letter from the Air Pollution Control District enclosing the approved plans is non-committal insofar as final approval is concerned. This, Mr. Harrison also pointed out in its relation to the contract with you for completion and installation of a remedy capable of passing Air Pollution Control District standards as covered and completed with you and by Mr. Richman on October 23 and 26th, 1953, respectively.

I shall be glad to have a report from you as your work on this progresses.

Yours very truly,

/s/ Roy E. Hallberg,

as Receiver of the Assets of the former Richman Trust.

:H—Enc.

---

Q. (By Mr. Enright): Directing your attention to Exhibit B, Mr. Hallberg's memorandum, and to the date January [423] 13th:

"Received notice re: Oliver Cromwell Incinerator. Oxy-Aire vice president said he would handle with authorities. Urged him to get on our job. Said drawings not received. Harrison to get them authority with letter (outlined contents for letter)."

That is at the time of the citation, the criminal citation for the smog violation?

A. No, I think that is the time of the violation of the operation of the incinerator. The notice was given, that was given January 13th, the criminal citation came through some days later, when nothing was done, and the incinerator was still being operated.

Q. The drawings there referred to, there was only one set of drawings involved in this transaction, wasn't there?      A. That is correct.

Q. So from January 13th to the 22nd they must have been in the hands of the Receiver?

A. They were in the hands of the Receiver from December 7th or 8th, when I mailed them to them, until January 22nd.

(Testimony of Frederick I. Richman.)

Mr. Whyte: I am going to move that answer be stricken for the purpose of making objection to the question.

The question is that between a certain period of time the plans and drawings must have been in the possession of [424] the Receiver.

Mr. Enright: I will withdraw the question. The documents speak for themselves.

Mr. Whyte: There is no basis for this gentleman testifying as to that.

Q. (By Mr. Enright): You did transmit the drawings to the Receiver on or about December 7th?

A. I did.

Q. There was only one set of drawings?

A. That is correct.

Q. Now, directing your attention to Mr. Hallberg, did you have a conversation with him during December concerning the subject matter of his experience in managing apartment houses?

A. I did.

Q. Can you fix the date of that conversation?

A. December 4, 1953.

Q. Where did that conversation occur?

A. In Mr. Hallberg's automobile.

Q. What was the occasion for your being in his automobile?

A. I was taking Mr. Hallberg to the various buildings and introducing him to the managers, and he was picking up the money that the managers had on hand.